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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(512) 463-5561
FAX (512) 463-5569

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

In This Issue

WITHDRAWN RULES

ADOPTED RULES

Open Meetings

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

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

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

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

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

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

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

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

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

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 161. GENERAL PROVISIONS

22 TAC §161.3

The Texas Medical Board (Board) adopts, on an emergency basis, an amendment to §161.3, concerning Organization and Structure.

The amendment establishes that board members may not appear at disciplinary or licensure hearings on behalf of licensure applicants or licensees and may not submit a written statement on behalf of a licensee or applicant unless the member receives preapproval from the board's executive committee.

The amendment is adopted on an emergency basis on the determination that there is an imminent peril to the public health, safety, or welfare.

Elsewhere in this issue of the *Texas Register,* the Board proposes amendments to §161.3 on a permanent basis.

The amendment is adopted on an emergency basis under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The rule is also adopted by the Board on an emergency basis pursuant to §2001.034(a)(1) of the Government Code on the determination that there is an imminent peril to the public health, safety, or welfare.

No other statutes, articles or codes are affected by this emergency adoption.

§161.3. Organization and Structure.

(a) The board shall consist of 19 members appointed by the Governor with the advice and consent of the Senate.

(b) The board shall consist of the following composition: nine physicians with a degree of doctor of medicine (M.D.) and licensed to practice medicine in Texas for at least three years; three physicians with a degree of doctor of osteopathic medicine (D.O.) and licensed to practice medicine in Texas for three years; and seven members who represent the public.

(c) The terms of board members shall be six years in length and shall be staggered so that the terms of not more than one-third of the members shall expire in a single calendar year. Upon completion of a term, a member shall continue to serve until a successor has been appointed. A member may be reappointed to successive terms as permitted by law at the discretion of the Governor.

(d) Each board member shall meet and maintain the qualifications for board membership as set by law.

(e) A board member should strive to achieve and project the highest standards of professional conduct. Such standards include:

(1) A board member should not accept or solicit any benefit that might influence the board member in the discharge of official duties or that the board member knows or should know is being offered with the intent to influence official conduct.

(2) A board member should not accept employment or engage in any business or professional activity that would involve the disclosure of confidential information acquired by reason of the official position as a board member.

(3) A board member should not accept employment that could impair independence of judgment in the performance of the board member's official duties.

(4) A board member should not make personal investments that could reasonably be expected to create a conflict between the board member's private interest and the public interest.

(5) A board member should not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the board member's official powers or performed the board member's official duties in favor of another.

(6) A board member should be fair and impartial in the conduct of the business of the board. A board member should project such fairness and impartiality in any meeting or hearing.

(7) A board member should be diligent in preparing for meetings and hearings.

(8) A board member should avoid conflicts of interests. If a conflict of interest should unintentionally occur, the board member should recuse himself or herself from participating in any matter before the board that could be affected by the conflict.

(9) A board member should avoid the use the board member's official position to imply professional superiority or competence.

(10) A board member should avoid the use of the board member's official position as an endorsement in any health care related matter.

(11) Board member appearances.

(A) [~~(11)~~] A board member should not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice. A board member may provide expert testimony if the board member has been called primarily as a fact witness. A board member should disclose any potential employment as an expert witness to and seek prior approval of the board's executive committee. When providing expert testimony in any matter, a board member should state that any opinion of the board member is not on behalf of or approved

by the board and should not claim special expertise because of board membership.

(B) A board member shall not appear in any administrative proceeding involving the exercise of the board's licensing or disciplinary authority before the board or the State Office of Administrative Hearings in which proceeding a licensee of the board is a party. A board member may furnish a written statement for a licensee to use in such administrative proceedings only if:

(i) the board member sought and received in writing the prior approval of the board's executive committee;

(ii) the written statement of the board member used by a licensee presents only facts that the board member has personally witnessed and does not offer or provide any statement as to character of the licensee or characterization of the events witnessed; and

(iii) the written statement plainly states that the recitation of the witnessed facts is not an indication of in any manner that the board concurs with, agrees to, or supports those facts or the board member in his or her action.

(12) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority.

(f) One ground for removal from the board occurs if a board member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board. If the executive director of the board has knowledge that a potential ground for removal exists due to a member's failure to attend an adequate number of regularly scheduled board meetings, the executive director shall notify the president of the board of the ground. The president of the board shall then notify the governor's office that a potential ground for removal exists. A board member shall be considered to have been absent from a regularly scheduled board meeting if the member fails to attend at least a portion of either a full board session or a portion of a regularly scheduled committee meeting to which a member is assigned during such board meeting. Any dispute or controversy as to whether or not an absence has occurred shall be submitted to the full board for resolution by a majority vote after giving the purported absentee the opportunity to present information concerning the alleged absences and after allowing discussion by other members of the board.

(g) Each member of the board shall receive per diem as provided by law for each day that the member engages in the business of the board and will be reimbursed for travel expenses incurred in accordance with the state of Texas and board's travel policies.

This agency hereby certifies that the emergency adoption 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 December 17, 2012.

TRD-201206492
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: December 17, 2012
Expiration date: April 15, 2013
For further information, please call: (512) 305-7016

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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 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §§33.33, 33.37, 33.51

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §33.33, concerning receipts that must be issued relating to currency exchange transactions; §33.37, concerning receipts that must be issued relating to money transmission transactions; and §33.51, concerning providing information to customers about how to file a complaint. The amended rules are proposed to prevent conflicts with new federal regulations and to correct inconsistencies.

The amendment to §33.33 is proposed to make the language of the rule consistent with the title of the rule.

The substantive amendments to §33.37 and §33.51 arise from the enactment of the Remittance Transfer Rule (the CFPB Rule) that CFPB added to Regulation E. The CFPB Rule, which becomes effective in the Spring of 2013, requires money services businesses to provide certain information on all receipts, including information about filing a complaint. Section 33.37 likewise requires Texas money transmission license holders to provide customers with receipts that contain certain information. Section 33.51 specifies what information a license holder must provide to a customer regarding filing a complaint. The federal and Texas rules require substantively the same information, but minor differences between the requirements could lead to confusion and duplicative efforts, or technical violations. Thus Texas money transmission license holders who are subject to the CFPB Rule may be subject to conflicting requirements. The amendments to §33.37 and §33.51 would provide that a license holder who fully complies with the CFPB Rule is also in compliance with the Texas rules with regard to receipts and consumer complaint notices.

Other changes were made to conform to Texas Register format.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rules.

Ms. Newberg also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is continued achievement of the purposes of the Money Services Act while avoiding an increase in the administrative burden on license holders.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rules as proposed. The customer complaint notice is already required of Texas license holders, and the proposed amendments are intended to relieve the potential added burdens of compliance with the CFPB Rule.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended sections must be submitted no later than 5:00 p.m. on January 28, 2013. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amended sections are proposed under Finance Code, §151.102, which authorizes the commission to adopt rules to administer the Money Services Act.

Finance Code, §151.405 and §151.602, are affected by the proposed amended sections.

§33.33. What Receipts Must I Issue Related to Currency Exchange Transactions?

(a) (No change.)

(b) Must I issue a receipt in connection with the currency exchange transactions I conduct?

(1) (No change.)

(2) With respect to a currency exchange transaction in an amount in excess of $1,000, you must issue a receipt for each transaction that:

(A) can be linked to the exchange transaction records required under §33.31(c)(1) and (2) of this title (relating to What Records Must I Keep Related to Currency Exchange Transactions? [~~Currency Exchange Recordkeeping~~]); and

(B) (No change.)

(3) (No change.)

§33.37. What Receipts Must I Issue Related to Money Transmission Transactions?

(a) (No change.)

(b) Must I issue a receipt in connection with the money transmission transactions I conduct?

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

(3) Any receipt issued pursuant to the Remittance Transfer Rule of Regulation E, 12 C.F.R. Part 1005, Subpart B, shall satisfy the requirements of paragraph (2) of this subsection, provided that such receipt fully complies with the requirements of the Remittance Transfer Rule.

(4) [~~(3)~~] With respect to a currency transmission transaction subject to Finance Code, Chapter 278, you must provide the receipt required under Finance Code, §278.051 and §278.053, as applicable. The information required under those sections may be included on the receipt required under paragraph (2) of this subsection.

§33.51. How Do [~~do~~] I Provide Information to My Customers about How to File a Complaint?

(a) (No change.)

(b) Definitions. Words used in this section that are defined in Finance Code, Chapter 151, have the same meaning as defined in the Finance Code. The following words and terms, when used in this section, shall have the following meanings unless the text clearly indicates otherwise.

(1) - (3) (No change.)

(4) "Required notice"--The notice described in subsection (d) of this section.

(c) (No change.)

(d) What must the notice say?

(1) You [~~Effective September 1, 2010, you~~] must use:

(A) a notice that conforms to the complaint notice requirements of the Remittance Transfer Rule of Regulation E (12 C.F.R. Part 1005, Subpart B), such as described by 12 C.F.R. §1005.31(b)(2)(vi), if the Remittance Transfer Rule applies to you; or

(B) a notice that substantially conforms to the language and form of the following notice [~~or a notice that substantially conforms to the language and form of the following notice with respect to your money transmission or currency exchange business~~]: If you have a complaint, first contact the consumer assistance division of (Name of License Holder) at (License Holder consumer assistance telephone number), if you still have an unresolved complaint regarding the company's money transmission or currency exchange activity, please direct your complaint to: Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, 1-877-276-5554 (toll free), www.dob.texas.gov.

[~~(2) Both the License Holder's name and telephone number must be in a bold font.~~]

(2) [~~(3)~~] You must provide the required notice in the language in which the transaction is conducted.

(e) How and where must I provide the required notice?

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

(3) In addition to including the required notice in a privacy notice in accordance with paragraph (1) of this subsection and on your website in accordance with paragraph (2) of this subsection, you must tell customers how to file complaints by one or more of the following methods:

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

(C) You may provide each customer with the required notice separately, provided that:

(i) not later than the time the transaction is conducted, you deliver the required notice in a form that your customer can retain[~~, in at least 10 point type~~]; or

(ii) - (iii) (No change.)

(4) (No change.)

(f) - (h) (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 December 14, 2012.

TRD-201206482
A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: February 15, 2013
For further information, please call: (512) 475-1300

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.23

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 1, Administration, §1.23, concerning the State of Texas Low Income Housing Plan and Annual Report (SLIHP). The purpose of the proposed amendment is to adopt by reference the 2013 SLIHP.

PURPOSE. The purpose of the SLIHP is to serve as a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The document reviews the Department's programs, current and future policies, resource allocation plan to meet state housing needs, and reports on State Fiscal Year 2012 performance. The Department is required to submit the SLIHP annually to its Board of Directors in accordance with Texas Government Code, §2306.072.

FISCAL NOTE. Mr. Timothy Irvine, Executive Director, has determined that, for each year of the first five years the amended section is in effect, enforcing or administering the amended section does not have any foreseeable implications related to costs or revenues of the state or local government.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine has also determined that for each year of the first five years the SLIHP is in effect, the public benefit anticipated will be improved communication with the public regarding the Department's programs and activities.

ECONOMIC IMPACT STATEMENT AND IMPACT ON SMALL AND MICRO BUSINESSES. The proposed amendments will have no effect on small businesses or persons; no anticipated economic cost to persons who are required to comply with the amended section; will not impact local employment; will

not have an adverse economic affect on small businesses or micro-businesses; and will not impact the local economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 4, 2013 to February 4, 2013, to receive input on the amended section. Written comments may be submitted to Texas Department of Housing and Community Affairs, Elizabeth Yevich, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: elizabeth.yevich@tdhca.state.tx.us, or by fax to (512) 475-0070. A public hearing will be held at 10:00 a.m., Wednesday, January 16, 2013, at Stephen F. Austin State Office Building, Room #172, 1700 N. Congress, Austin, Texas 78701. COMMENTS MUST BE RECEIVED BY 5:00 P.M., MONDAY, FEBRUARY 4, 2013.

The full text of both the draft and final 2013 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2013 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

STATUTORY AUTHORITY: The amended section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the amended section is proposed pursuant to Texas Government Code, §2306.0723, which specifically authorizes the Department to consider the SLIHP as a rule.

The proposed amended section affects no other code, article or statute.

§1.23. State of Texas Low Income Housing Plan and Annual Report (SLIHP).

The Texas Department of Housing and Community Affairs (the "Department") adopts by reference the 2013 [~~2012~~] State of Texas Low Income Housing Plan and Annual Report (SLIHP). The full text of the 2013 [~~2012~~] SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2013 [~~2012~~] SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

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 December 11, 2012.

TRD-201206361
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 475-3916

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.21

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.21, concerning Acupuncture, to clarify that all therapeutic modalities provided by Doctors of Chiropractic in Texas must comply with the chiropractic scope of practice as defined by the Texas Occupations Code (the Chiropractic Act).

The Board proposes this amendment to make explicitly clear that any acupuncture, acupressure and meridian therapy (in addition to any other therapeutic modality) must be done in accordance with the legislatively defined scope of practice for chiropractic.

Ms. Yvette Yarbrough, Executive Director of the Texas Board of Chiropractic Examiners, has determined that, for each year of the first five years this amendment will be in effect, there will be no additional cost to state or local governments.

Ms. Yarbrough has also determined that, for each year of the first five years this amendment will be in effect, the public benefit of this amendment will be explicit clarity in the limit of scope of practice in the practice of chiropractic acupuncture. Ms. Yarbrough has also determined that there will be no adverse economic effect to individuals and small or micro businesses during the first five years this amendment will be in effect.

Comments on the proposed amendment and/or a request for a public hearing on the proposed amendment may be submitted to Yvette Yarbrough, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The amendment is proposed under Texas Occupations Code §201.152, relating to rules, and §201.002, relating to the practice of chiropractic. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.002 defines the practice of chiropractic and the limits of chiropractic scope of practice. Additionally, the amendment is proposed under Texas Occupations Code §205.001, relating to the definition of acupuncture, and §205.003, relating to exemptions from the Acupuncture Act. Section 205.001 defines acupuncture as a nonsurgical, nonincisive procedure. Section 205.003 exempts from the requirements of the Acupuncture Act health care professionals licensed under a statute other than the Acupuncture Act and acting within the scope of their license.

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

§75.21. Acupuncture.

(a) Acupuncture, and the related practices of acupressure and meridian therapy, includes methods for diagnosing and treating a patient by stimulating specific points on or within the musculoskeletal system by various means, including, but not limited to, manipulation, heat, cold, pressure, vibration, ultrasound, light electrocurrent, and short-needle insertion for the purpose of obtaining a biopositive reflex response by nerve stimulation. All therapeutic modalities provided by Doctors of Chiropractic in Texas must comply with the chiropractic scope of practice as defined by the Texas Occupations Code §201.002.

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

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

Filed with the Office of the Secretary of State on December 12, 2012.

TRD-201206437

Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 305-6716

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CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §80.1

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §80.1, concerning Delegation of Authority, to specify when and how a licensee can delegate authority to adjust or manipulate to a recent chiropractic college graduate.

The proposed amendment allows certain recent graduates of an accredited chiropractic college (defined as having graduated within the previous six months from a chiropractic college accredited by the Council on Chiropractic Education (CCE) and participating in a postceptorship program offered by a CCE-accredited chiropractic college) adjust or manipulate in the same manner that the rule allows a student enrolled in chiropractic college who had completed an out-patient clinic. In such circumstances, the chiropractic adjustment or manipulation must be performed under the supervision of a licensee who need not be physically present in the treating room at the time of the adjustment or manipulation, but must be on-site at the time of the adjustment or manipulation.

Ms. Yvette Yarbrough, Executive Director of the Texas Board of Chiropractic Examiners, has determined that, for each year of the first five years this amendment will be in effect, there will be no additional cost to state or local governments.

Ms. Yarbrough has also determined that, for each year of the first five years this amendment will be in effect, the public benefit of this amendment will be clearer guidance on the oversight required for recent graduates to adjust and manipulate patients. Ms. Yarbrough has also determined that there will be no adverse economic effect to individuals and small or micro businesses during the first five years this amendment will be in effect.

Comments on the proposed amendment and/or a request for a public hearing on the proposed amendment may be submitted to Yvette Yarbrough, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The amendment is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

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

§80.1. Delegation of Authority.

(a) - (c) (No change.)

(d) A licensee may allow or direct certain recent graduates of an accredited chiropractic college to perform chiropractic adjustments or manipulations. The chiropractic adjustment or manipulation must be performed under the supervision of a licensee who need not be physically present in the treating room at the time of the adjustment or manipulation, but must be on-site at the time of the adjustment or manipulation. A "recent graduate" is one who graduated from a chiropractic college accredited by the Council on Chiropractic Education (CCE) within the previous six (6) months and is currently enrolled in a postceptorship program offered by a CCE-accredited chiropractic college.

(e) [~~(d)~~] In delegating the performance of a specific task or procedure, a licensee shall verify that a person is qualified and properly trained. "Qualified and properly trained" as used in this section means that the person has the requisite education, training, and skill to perform a specific task or procedure.

(1) Requisite education may be determined by a license, degree, coursework, on-the-job training, or relevant general knowledge.

(2) Requisite training may be determined by instruction in a specific task or procedure, relevant experience, or on-the-job training.

(3) Requisite skill may be determined by a person's talent, ability, and fitness to perform a specific task or procedure.

(4) A licensee may delegate a specific task or procedure to an unlicensed person if the specific task or procedure is within the scope of chiropractic and if the delegation complies with the other requirements of this section, the Chiropractic Act, and the board's rules.

(f) [~~(e)~~] A licensee may allow or direct a qualified and properly trained person, who is acting under the licensee's supervision, to perform a task or procedure that assists the doctor of chiropractic in making a diagnosis, prescribing a treatment plan or treating a patient if the performance of the task or procedure does not require the training of a doctor of chiropractic in order to protect the health or safety of a patient, such as:

(1) taking the patient's medical history;

(2) taking or recording vital signs;

(3) performing radiologic procedures;

(4) taking or recording range of motion measurements;

(5) performing other prescribed clinical tests and measurements;

(6) performing prescribed physical therapy modalities, therapeutic procedures, physical medicine and rehabilitation, or other treatments as described in the American Medical Association's Current Procedural Terminology Codebook, the Centers for Medicare and Medicaid Services' Health Care Common Procedure Coding System, or other national coding system;

(7) demonstrating prescribed exercises or stretches for a patient; or

(8) demonstrating proper uses of dispensed supports and devices.

(g) [~~(f)~~] A licensee may not allow or direct a person:

(1) to perform activities that are outside the licensee's scope of practice;

(2) to perform activities that exceed the education, training, and skill of the person or for which a person is not otherwise qualified and properly trained; or

(3) to exercise independent clinical judgment unless the person holds a valid Texas license or certification that would allow or authorize the person to exercise independent clinical judgment.

(h) [~~(g)~~] A licensee shall not allow or direct a person whose chiropractic license has been suspended or revoked, in Texas or any

other jurisdiction, to practice chiropractic in connection with the treatment of a patient of the licensee during the effective period of the suspension or upon revocation.

(i) [~~(h)~~] A licensee is responsible for and will participate in each patient's care. A licensee shall conform to the minimal acceptable standards of practice of chiropractic in assessing and evaluating each patient's status.

(j) [~~(i)~~] It is the responsibility of each licensee to determine the number of qualified and properly trained persons that the licensee can safely supervise. A licensee must be on-call when any or all treatment is provided under the licensee's direction unless there is another licensee present on-site or designated as being on-call. On-call means that the licensee must be available for consultation within 15 minutes either in person or by other means of telecommunication.

(k) [~~(j)~~] A licensee's patient records shall differentiate between services performed by a doctor of chiropractic and the services performed by a person under the licensee's supervision.

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 December 12, 2012.

TRD-201206440
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 305-6716

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PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.8

The State Board of Dental Examiners (SBDE) proposes an amendment to §108.8, concerning Records of the Dentist. The amendment is proposed to improve the recordkeeping and diagnoses of dentists by requiring documentation of oral pathology examination as an aspect of the dental record.

Elsewhere in this issue of the *Texas Register,* the SBDE withdraws the proposed amendment to §108.8, which was published in the July 6, 2012, issue of the *Texas Register* (37 TexReg 5073).

Mr. 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 local or state government as a result of enforcing or administering the rule.

Mr. Parker has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the section will be protection of the public health and safety. There will be no foreseen effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted in writing to Nycia Deal, Staff Attorney, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701. Comments may also be submitted electronically to *nycia@tsbde.texas.gov* or 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 amended section is published in the *Texas Register.*

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

§108.8. Records of the Dentist.

(a) The term dental records includes, but is not limited to: identification of the practitioner providing treatment; medical and dental history; limited physical examination; oral pathology examination; radiographs; dental and periodontal charting; diagnoses made; treatment plans; informed consent statements or confirmations; study models, casts, molds, and impressions, if applicable; cephalometric diagrams; narcotic drugs, dangerous drugs, controlled substances dispensed, administered or prescribed; anesthesia records; pathology and medical laboratory reports; progress and completion notes; materials used; dental laboratory prescriptions; billing and payment records; appointment records; consultations and recommended referrals; and post treatment recommendations.

(b) - (g) (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 December 17, 2012.

TRD-201206502
Glenn Parker
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 475-0977

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 161. GENERAL PROVISIONS

22 TAC §161.3

The Texas Medical Board (Board) proposes an amendment to §161.3, concerning Organization and Structure.

The amendment establishes that board members may not appear at disciplinary or licensure hearings on behalf of licensure applicants or licensees and may not submit a written statement on behalf of a licensee or applicant unless the member receives preapproval from the board's executive committee.

Elsewhere in this issue of the *Texas Register,* the Board adopts §161.3 on an emergency basis.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to ensure that board members fulfill their duties as board members in carrying out the mission of the board.

Mrs. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§161.3. Organization and Structure.

(a) The board shall consist of 19 members appointed by the Governor with the advice and consent of the Senate.

(b) The board shall consist of the following composition: nine physicians with a degree of doctor of medicine (M.D.) and licensed to practice medicine in Texas for at least three years; three physicians with a degree of doctor of osteopathic medicine (D.O.) and licensed to practice medicine in Texas for three years; and seven members who represent the public.

(c) The terms of board members shall be six years in length and shall be staggered so that the terms of not more than one-third of the members shall expire in a single calendar year. Upon completion of a term, a member shall continue to serve until a successor has been appointed. A member may be reappointed to successive terms as permitted by law at the discretion of the Governor.

(d) Each board member shall meet and maintain the qualifications for board membership as set by law.

(e) A board member should strive to achieve and project the highest standards of professional conduct. Such standards include:

(1) A board member should not accept or solicit any benefit that might influence the board member in the discharge of official duties or that the board member knows or should know is being offered with the intent to influence official conduct.

(2) A board member should not accept employment or engage in any business or professional activity that would involve the disclosure of confidential information acquired by reason of the official position as a board member.

(3) A board member should not accept employment that could impair independence of judgment in the performance of the board member's official duties.

(4) A board member should not make personal investments that could reasonably be expected to create a conflict between the board member's private interest and the public interest.

(5) A board member should not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the board member's official powers or performed the board member's official duties in favor of another.

(6) A board member should be fair and impartial in the conduct of the business of the board. A board member should project such fairness and impartiality in any meeting or hearing.

(7) A board member should be diligent in preparing for meetings and hearings.

(8) A board member should avoid conflicts of interests. If a conflict of interest should unintentionally occur, the board member should recuse himself or herself from participating in any matter before the board that could be affected by the conflict.

(9) A board member should avoid the use the board member's official position to imply professional superiority or competence.

(10) A board member should avoid the use of the board member's official position as an endorsement in any health care related matter.

(11) Board member appearances.

(A) [~~(11)~~] A board member should not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice. A board member may provide expert testimony if the board member has been called primarily as a fact witness. A board member should disclose any potential employment as an expert witness to and seek prior approval of the board's executive committee. When providing expert testimony in any matter, a board member should state that any opinion of the board member is not on behalf of or approved by the board and should not claim special expertise because of board membership.

(B) A board member shall not appear in any administrative proceeding involving the exercise of the board's licensing or disciplinary authority before the board or the State Office of Administrative Hearings in which proceeding a licensee of the board is a party. A board member may furnish a written statement for a licensee to use in such administrative proceedings only if:

(i) the board member sought and received in writing the prior approval of the board's executive committee;

(ii) the written statement of the board member used by a licensee presents only facts that the board member has personally witnessed and does not offer or provide any statement as to character of the licensee or characterization of the events witnessed; and

(iii) the written statement plainly states that the recitation of the witnessed facts is not an indication of in any manner that the board concurs with, agrees to, or supports those facts or the board member in his or her action.

(12) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority.

(f) One ground for removal from the board occurs if a board member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board. If the executive director of the board has knowledge that a potential ground for removal exists due to a member's failure to attend an adequate number of regularly scheduled board meetings, the executive director shall notify the president of the board of the ground. The president of the board shall then notify the governor's office that a potential ground for

removal exists. A board member shall be considered to have been absent from a regularly scheduled board meeting if the member fails to attend at least a portion of either a full board session or a portion of a regularly scheduled committee meeting to which a member is assigned during such board meeting. Any dispute or controversy as to whether or not an absence has occurred shall be submitted to the full board for resolution by a majority vote after giving the purported absentee the opportunity to present information concerning the alleged absences and after allowing discussion by other members of the board.

(g) Each member of the board shall receive per diem as provided by law for each day that the member engages in the business of the board and will be reimbursed for travel expenses incurred in accordance with the state of Texas and board's travel policies.

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

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TRD-201206493
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 305-7016

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CHAPTER 187. PROCEDURAL RULES SUBCHAPTER E. PROCEEDINGS RELATING TO PROBATIONERS

22 TAC §187.44

The Texas Medical Board (Board) proposes an amendment to §187.44, concerning Probationer Show Compliance Proceedings.

The amendment establishes a five calendar day deadline for probationer rebuttal material.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that set reasonable deadlines for the submission of materials to the Board in relation to Probationer Show Compliance Proceedings.

Mrs. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §164.003 and §164.010, Texas Occupations Code.

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

§187.44. Probationer Show Compliance Proceedings.

Pursuant to §§164.003 - 164.004 of the Act and §§2001.054 - 2001.056 [~~§§164.003-.004 of the Act and §§2001.054-.056~~] of the APA, the following rules shall apply to probationer show compliance proceedings.

(1) If a licensee is placed under an order, the licensee shall be monitored by the board to ensure compliance. In the event that a licensee fails to comply with the licensee's order, such noncompliance will be addressed at a probationer show compliance proceeding.

(2) All licensees under any order must maintain their licenses in good standing, including meeting all fee and continuing medical education requirements. Failure to keep a license in good standing shall be evidence of noncompliance with a board order and considered a violation of the Act and board rules.

(3) Unless otherwise stated, the policies and procedures as described for ISCs in §187.18 of this title (relating to Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance ("ISC")) shall apply to probationer show compliance proceedings.

(4) Prior to the Probationer Show Compliance Hearing, the board representatives shall be provided with the information sent to the licensee by the board staff and all information timely received in response from the licensee. All notice relating to the Probationer Show Compliance Proceeding shall be mailed to the licensee at least ten days prior to the date of the proceeding. Information must be received from the licensee at least five days prior to the Probationer Show Compliance Proceeding.

(5) At a probationer show compliance proceeding, the board representatives may consider facts relevant to the alleged noncompliance, and the board representatives may recommend that the licensee's existing order be modified or extended.

(6) To the extent possible, board members and district review committee members are required to serve as representatives at probationer show compliance proceedings an equal number of times during a calendar year. In the event a board member or district review committee member has a complaint regarding the frequency or infrequency of service as a representative required for any member, the complaint may be routed in writing to the director of enforcement for the board who shall then bring the complaint to the attention of the president of the board for a resolution.

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

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TRD-201206494
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 305-7016

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CHAPTER 192. OFFICE-BASED ANESTHESIA SERVICES

22 TAC §192.1, §192.2

The Texas Medical Board (Board) proposes amendments to §192.1, concerning Definitions, and §192.2, concerning Provision of Anesthesia Services in Outpatient Settings.

The amendment to §192.1 revises the definitions analgesics, anesthesia, anesthesia services, anxiolytics, Level IV services, and monitored anesthesia care; and adds definitions for hypnotics, peripheral nerve block and tumescent anesthesia.

The amendment to §192.2 revises the requirements for Level I, II, and III services, for necessary emergency equipment, and reporting to the board of intraoperative and postoperative deaths.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules consistent with the accepted practice and standards by practicing anesthesiologists in Texas and to enhance safety standards for office-based procedures.

Mrs. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. The effect to individuals required to comply with the rules as proposed is undetermined but physicians who have to adjust their practices to meet the additional requirements will have costs. The effect on small or micro businesses is undetermined but group practices that provide office-based anesthesia and who will have to adjust their practices to meet the additional requirements will have additional costs.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by Texas Occupations Code, Chapter 162, Subchapter C.

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

§192.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents indicate otherwise.

(1) ACLS--Advanced Cardiac Life Support, as defined by the AHA.

(2) AED--Automatic External Defibrillator.

(3) AHA--American Heart Association.

[~~(4) ASHI--American Safety and Health Institute.~~]

(4) [~~(5)~~] Analgesics--Dangerous or scheduled drugs that alleviate pain, but not including non-opioid based drugs such as acetaminophen or non-steroidal anti-inflammatory drugs (NSAIDs).

(5) [~~(6)~~] Anesthesia--Use of local anesthetics (in amounts that generate the effect of general anesthesia, regional anesthesia, or monitored anesthesia care), analgesics, anxiolytics, and/or hypnotics to create a loss of feeling or sensation by interrupting or depressing nerve function. [~~The loss of feeling or sensation resulting from the use of dangerous or scheduled drugs to depress nerve function. Anesthetics are scheduled or dangerous drugs used to induce anesthesia.~~]

(6) [~~(7)~~] Anesthesia Services--The use of anesthesia [~~dangerous and scheduled drugs, including anesthetics, analgesics, and anxiolytics,~~] for the performance of Level II - IV services.

(7) [~~(8)~~] Anxiolytics--Dangerous or scheduled drugs used to provide sedation and/or to treat episodes of anxiety.

(8) ASHI--American Safety and Health Institute.

(9) ASA--American Society of Anesthesiologists.

[~~(9) Anesthesiologist assistant--A graduate of an approved anesthesiologist assistant training program.~~]

[~~(10) Anesthesiology resident--A physician who is presently in an approved Texas anesthesiology residency program who is either licensed as a physician in Texas or holds a postgraduate resident permit issued by the Texas Medical Board.~~]

(10) [~~(11)~~] BLS--Basic Life Support, as defined by the AHA.

(11) [~~(12)~~] Certified registered nurse anesthetist (CRNA)--A person licensed by the Texas Board of Nursing (TBN) as a registered professional nurse, authorized by the TBN as an advanced practice nurse in the role of nurse anesthetist, and certified by a national certifying body recognized by the TBN.

(12) [~~(13)~~] Dangerous drugs--Medications defined by the Texas Dangerous Drug Act, Chapter 483, Texas Health and Safety Code. Dangerous drugs require a prescription, but are not included in the list of scheduled drugs. A dangerous drug bears the legend "Caution: federal law prohibits dispensing without a prescription" or "Prescription Only."

(13) Hypnotics--Dangerous or scheduled drugs used to induce unconsciousness. This includes inhaled anesthetics and nonvolatile anesthetic agents such as Barbiturates, Benzodiazepines, Opioids, Etomidate, Propofol, and Ketamine.

(14) Level I services--Delivery of analgesics or anxiolytics by mouth, as prescribed for the patient on order of a physician, at a dose level low enough to allow the patient to remain ambulatory.

(15) Level II services--The administration of tumescent anesthesia or the delivery of analgesics or anxiolytics by mouth in dosages greater than allowed at Level I, as prescribed for the patient on order of a physician.

(16) Level III services--Delivery of analgesics or anxiolytics other than by mouth, including intravenously, intramuscularly, or rectally.

(17) Level IV services--Delivery of general anesthetics, including regional anesthetics and monitored anesthesia care; spinal, epidural, or caudal blocks for the purposes of providing anesthesia or monitored anesthesia care.

(18) Local Anesthetics--Dangerous drugs administered topically or by injection, which interrupt nerve conduction, temporarily creating a loss of sensation to an affected area and that generate the effect of general anesthesia, regional anesthesia, or monitored anesthesia care.

(19) [~~(18)~~] Monitored anesthesia care--Includes all aspects of anesthesia care by an anesthesiologist or member of the anesthesia

care team including the administration of sedatives, analgesics, hypnotics and other anesthesia agents or medications necessary to ensure patient safety and comfort. May include situations [~~Situations~~] where a patient undergoing a diagnostic or therapeutic procedure receives doses of medication that create a risk of loss of normal protective reflexes or loss of consciousness and the patient remains able to protect the airway during the procedure. If the patient is rendered unconscious and loses normal protective reflexes, then anesthesia care shall be considered a general anesthetic.

(20) [~~(19)~~] Outpatient setting--Any facility, clinic, center, office, or other setting that is not a part of a licensed hospital or a licensed ambulatory surgical center with the exception of [~~all of~~] the following [~~listed in subparagraphs (A) - (D) of this paragraph~~]:

(A) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. §479-1 or as listed under a successor federal statute or regulation;

(B) a facility maintained or operated by a state or governmental entity;

(C) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and

(D) an outpatient setting where the facility itself is accredited by either the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers, the American Association for the Accreditation of Ambulatory Surgery Facilities, or the Accreditation Association for Ambulatory Health Care.

(21) [~~(20)~~] Board--The Texas Medical Board.

(22) [~~(21)~~] PALS--Pediatric Advanced Life Support, as defined by the AHA.

(23) Peripheral nerve block--The injection of local anesthetics into an area of the body directly adjacent to a peripheral nerve, for the purpose of blocking the response to pain in the distribution of sensation of that nerve.

(24) [~~(22)~~] Physician--A person licensed by the Texas Medical Board as a medical doctor or doctor of osteopathic medicine who diagnoses, treats, or offers to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or effects cures thereof and charges therefore, directly or indirectly, money or other compensation. "Physician" and "surgeon" shall be construed as synonymous.

(25) [~~(23)~~] Scheduled Drugs--Medications defined by the Texas Controlled Substances Act, Chapter 481, Texas Health and Safety Code. This Act establishes five categories, or schedules of drugs, based on risk of abuse and addiction. (Schedule I includes drugs that carry an extremely high risk of abuse and addiction and have no legitimate medical use. Schedule V includes drugs that have the lowest abuse/addiction risk).

(26) Tumescent Anesthesia--A specialized type of subcutaneous infiltration of a dilute mixture of local anesthetic and epinephrine known as tumescent solution.

§192.2. Provision of Anesthesia Services in Outpatient Settings.

(a) The purpose of this chapter [~~these rules~~] is to identify the roles and responsibilities of physicians providing, or overseeing by proper delegation, anesthesia services in outpatient settings and to provide the minimum acceptable standards for the provision of anesthesia services in outpatient settings.

(b) The rules promulgated under this title do not apply to physicians who practice in the following settings listed in paragraphs (1) - (8) of this subsection:

(1) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used;

(2) any setting physically located outside the State of Texas;

(3) a licensed hospital, including an outpatient facility of the hospital that is separately located apart from the hospital;

(4) a licensed ambulatory surgical center;

(5) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. §479-1 or as listed under a successor federal statute or regulation;

(6) a facility maintained or operated by a state or governmental entity;

(7) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and

(8) an outpatient setting where the facility itself is accredited as an office-based surgery facility or treatment room by:

(A) the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;

(B) the American Association for the Accreditation of Ambulatory Surgery Facilities; or

(C) the Accreditation Association for Ambulatory Health Care.

(c) Standards for Anesthesia Services. The following standards are required for outpatient settings providing anesthesia services that are administered within two hours before an outpatient procedure. If personnel and equipment meet the requirements of a higher level, lower level anesthesia services may also be provided.

(1) Level I services:

(A) at least two personnel must be present, including the physician who must be currently certified by AHA or ASHI, at a minimum, in BLS; and

(B) the following age-appropriate equipment must be present:

(i) bag mask valve; and

(ii) oxygen.[~~;~~]

[(iii) ~~AED or other defibrillator; and~~]

[(iv) ~~epinephrine, atropine, adreno-corticoids, and antihistamines.~~]

(2) Level II services:

(A) at least two personnel must be present, including the physician who must be currently certified by AHA or ASHI, at a minimum, in ACLS or PALS, as appropriate;

(i) another person must be currently certified by AHA or ASHI, at a minimum, in BLS; and

(ii) a licensed health care provider, who may be one of the two required personnel, must attend the patient, until the patient is ready for discharge; and

(B) a crash cart must be present containing drugs and equipment necessary to carry out ACLS protocols, including, but not limited to, the following age-appropriate equipment:

(i) bag mask valve and appropriate airway maintenance devices;

(ii) oxygen;

(iii) AED or other defibrillator;

(iv) pre-measured doses of first line cardiac medications, including epinephrine, atropine, adreno-corticoids, and antihistamines;

(v) IV equipment;

(vi) pulse oximeter; [~~and~~]

(vii) EKG Monitor;[~~.~~]

(viii) benzodiazepines for intravenous or intramuscular administration and lipid emulsion for treating local anesthetic systemic toxicity; and

(ix) specific reversal agents, flumazenil and naloxone, if benzodiazepines or narcotics are used for sedation.

(3) Level III services:

(A) at least two personnel must be present, including the physician who must be currently certified by AHA or ASHI, at a minimum, in ACLS or PALS, as appropriate;

(i) another person must be currently certified by AHA or ASHI, at a minimum, in BLS;

(ii) a licensed health care provider, which may be either of the two required personnel, must attend the patient, until the patient is ready for discharge; and

(iii) a person, who may be either of the two required personnel, must be responsible for monitoring the patient during the procedure; and

(B) the same equipment required for Level II;[~~.~~]

(C) establishment of a working intravenous feed;

(D) the presence of appropriate antagonists (i.e. Naloxone and Flumazenil); and

(E) adherence to ASA Standards for Postanesthesia Care.

(4) Level IV services: Physicians who practice medicine in this state and who administer anesthesia or perform a procedure for which anesthesia services are provided in outpatient settings at Level IV shall follow current, applicable standards and guidelines as put forth by the American Society of Anesthesiologists (ASA) including, but not limited to, the following listed in subparagraphs (A) - (H) of this paragraph:

(A) Basic Standards for Preanesthesia Care;

(B) Standards for Basic Anesthetic Monitoring;

(C) Standards for Postanesthesia Care;

(D) Position on Monitored Anesthesia Care;

(E) The ASA Physical Status Classification System;

(F) Guidelines for Nonoperating Room Anesthetizing Locations;

(G) Guidelines for Ambulatory Anesthesia and Surgery; and

(H) Guidelines for Office-Based Anesthesia.

(d) - (h) (No change.)

(i) Each location must have emergency supplies immediately available as required by subsection (c) of this section. Supplies should include emergency drugs and equipment appropriate for the purpose of cardiopulmonary resuscitation. If "triggering agents" associated with malignant hyperthermia are used or if the patient is at risk for malignant hyperthermia, required equipment must include a defibrillator, difficult airway equipment, as well as the medication and equipment necessary for the treatment of malignant hyperthermia. [~~This must include a defibrillator, difficult airway equipment, and drugs and equipment necessary for the treatment of malignant hyperthermia if "triggering agents" associated with malignant hyperthermia are used or if the patient is at risk for malignant hyperthermia.~~] Equipment shall be appropriately sized for the patient population being served. Resources for determining appropriate drug dosages shall be readily available. The emergency supplies shall be maintained and inspected by qualified personnel for presence and function of all appropriate equipment and drugs at intervals established by protocol to ensure that equipment is functional and present, drugs are not expired, and office personnel are familiar with equipment and supplies. Records of emergency supply checks shall be maintained in a separate, dedicated log and made available upon request. Records of emergency supply checks shall be maintained for seven years or for a period of time as determined by the board.

(j) (No change.)

(k) An anesthesia provider must perform a presedation assessment of each patient having anesthesia services. The assessment must include, at a minimum:

(1) an airway evaluation; and

(2) an ASA physical status classification.

(l) [~~(k)~~] All equipment and anesthesia-related services must remain available at the office-based anesthesia site until the patient is discharged.

(m) [~~(l)~~] Physicians or surgeons must notify the board in writing within 15 days if a procedure performed in any of the settings under this chapter [~~these rules~~] resulted in:

(1) an unanticipated and unplanned transport of the patient to a hospital for observation or treatment for a period in excess of 24 hours;[~~, or a patient's death intraoperatively or within the immediate postoperative period. Immediate postoperative period is defined as 72 hours.~~]

(2) an intraoperative death;

(3) a death occurring within the first 24 hours of the postoperative time period.

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 December 17, 2012.

TRD-201206495

Mari Robinson, J.D.
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 195. PAIN MANAGEMENT CLINICS

22 TAC §195.2

The Texas Medical Board (Board) proposes an amendment to §195.2, concerning Certification of Pain Management Clinics.

The amendment provides that if an applicant for a pain management clinic certificate is under investigation by the Board, then a decision on the applicant's initial application will not be decided upon until the investigation is closed.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to ensure that applicants for pain management certificates meet the eligibility requirements for certification and that certificates are not granted to individuals who may pose a danger to the public.

Mrs. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by Chapter 168, Texas Occupations Code.

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

§195.2. Certification of Pain Management Clinics.

(a) Application for Certification.

(1) Certification requirement. Effective September 1, 2010, a pain management clinic may not operate in Texas without obtaining a certificate from the board. A physician who owns or operates a pain management clinic shall submit an application on a form prescribed by the board. If a clinic has more than one physician owner, then only the medical director must file an application with the board. Certificates issued pursuant to this subsection are not transferable or assignable. If there is more than one physician owner of the clinic, only the primary physician owner shall be required to register with the board.

(2) Determination of Eligibility by the Executive Director. The executive director shall review applications for certification and may determine whether an applicant is eligible for certification or refer an application to a committee of the board for review. If an applicant is determined to be ineligible for a certificate by the executive director pursuant to §§167.001 - 167.202 of the Act or this chapter, the applicant may request review of that determination by a committee of the board. The applicant must request the review not later than the 20th day after the date the applicant receives notice of the determination.

(3) Ineligibility Determination.

(A) If the board, upon recommendation by a committee of the board, determines that an applicant is ineligible for certification, the applicant shall be notified of the board's determination and given the option of appealing the determination to State Office of Administrative Hearings (SOAH). An applicant has 20 days from the date the applicant receives notice of the committee's determination to appeal to SOAH.

(B) If the applicant timely requests a SOAH hearing, the applicant must file a petition with SOAH appealing the determination and shall comply with all other provisions relating to formal proceedings as set out in Chapter 187, Subchapter C of this title (relating to Formal Board Proceedings at SOAH). If an applicant subsequently withdraws the appeal, the matter shall be referred to the full board to render a final determination on the application.

(C) If the applicant does not timely request an appeal to SOAH, the board's determination shall be shall become administratively final at the next scheduled board meeting.

(D) A determination of ineligibility by the board shall be in writing and made available to the public.

(4) Withdrawal. Applicants for certificates may withdraw their applications at any time, unless:

(A) the executive director has made a determination of ineligibility;

(B) the executive director has referred an application to a committee of the board for a determination of eligibility and the committee has determined that the applicant is not exempt from the requirements of §195.4 of this title (relating to Operation of Pain Management Clinics) or is ineligible for a certificate; or

(C) the applicant is under investigation by the board for inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance.

(5) Temporary Suspension of Certificate. A temporary suspension hearing for a clinic shall be held pursuant to the procedures of Chapter 187, Subchapter F of this title (relating to Temporary Suspension Proceedings). Evidence of continuing threat to public health and welfare shall include evidence that a clinic is in violation of this chapter regarding eligibility or operation or that the clinic's staff is dispensing, administering, or prescribing medications in a nontherapeutic manner.

(6) Confidentiality of Records. All records in the possession of or received or gathered by the board relating to an application for or investigation of a pain clinic shall be considered confidential under §164.007 of the Texas Occupations Code and not subject to release under the Public Information Act, Chapter 552 of the Texas Government Code.

(7) Expiration. An application that has been filed with the board in excess of one year will be considered expired. Any further request for certification will require submission of a new application. An extension to an application may be granted under certain circumstances, including:

(A) Delay by board staff in processing an application;

(B) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;

(C) Licensure Committee requires an applicant to meet specific additional requirements for licensure and the application will expire prior to deadline established by the Committee;

(D) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation;

(E) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events.

(b) Eligibility for Certification.

(1) The owner or operator of a pain management clinic, an employee of the clinic, or a person with whom a clinic contracts for services may not:

(A) have been denied, by any jurisdiction, a license issued by the Drug Enforcement Agency or a state public safety agency under which the person may prescribe, dispense, administer, supply, or sell a controlled substance;

(B) have held a license issued by the Drug Enforcement Agency or a state public safety agency in any jurisdiction, under which the person may prescribe, dispense, administer, supply, or sell a controlled substance, that has been restricted; or

(C) have been subject to disciplinary action by any licensing entity for conduct that was a result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance.

(2) A pain management clinic may not be owned wholly or partly by a person who has been convicted of, pled nolo contendere to, or received deferred adjudication for:

(A) an offense that constitutes a felony; or

(B) an offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance as defined by Texas Occupations Code §551.003(11).

(3) As a requirement for eligibility, a physician applying for a pain management certificate must meet the active practice of medicine definition as defined under §163.11 of this title (relating to Active Practice of Medicine).

(c) Expiration of Certificate.

(1) Certificates shall be valid for two years.

(2) Certificate holders shall have a 180-day grace period from the expiration date to renew the certificate, however, the owner or operator of the clinic may not continue to operate the clinic while the permit is expired.

(d) Certificate Renewal.

(1) Certificates must be timely renewed. If a certificate is not renewed before the expiration of the grace period, the certificate will be automatically cancelled and the owner or operator of the clinic must reapply for original certification.

(2) A certificate may not be cancelled for nonrenewal or by request, while a clinic is under investigation with the board.

(e) The board shall coordinate the certification required under this section with the registration required under the Medical Practice Act, Texas Occupations Code, Chapter 156, so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimum of administrative burden to the board and to physicians.

(f) Ownership of a pain management clinic is the practice of medicine.

(g) Pending Investigations. If an applicant is under investigation by the board for inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance at the time of application or while the applicant's application is being processed, no decision on the application shall be rendered until resolution of the board investigation.

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

Filed with the Office of the Secretary of State on December 17, 2012.

TRD-201206496
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 305-7016

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER R. VIATICAL AND LIFE SETTLEMENTS

28 TAC §§3.1701 - 3.1717

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

INTRODUCTION. The Texas Department of Insurance (TDI) proposes the repeal of Chapter 3, Subchapter R, §§3.1701 - 3.1717, concerning viatical and life settlements. Repeal of the subchapter is necessary because Insurance Code Chapter 1111, Subchapter A, was repealed by House Bill (HB) 2277, 82nd Legislature, Regular Session, effective September 1, 2011. In conjunction with this repeal, the department is proposing new Subchapter R, §§3.1701 - 3.1703, 3.1720 - 3.1730, 3.1740 - 3.1744, and 3.1760, to implement the new Life Settlements Act, Insurance Code Chapter 1111A, also published in this issue of the *Texas Register.*

FISCAL NOTE. Godwin Ohaechesi, director of Company Licensing and Registration, has determined that for each year of the first five years the proposed repeal of the sections will be in effect, there will be no fiscal impact to state government and no impact to local governments as a result of the enforcement or administration of the proposal. There will be no measurable ef-

fect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Ohaechesi also has determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of administration and enforcement of the repealed sections will be the elimination of obsolete regulations. There is no anticipated economic cost to persons required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), TDI has determined that this proposed repeal will not have an adverse economic effect on small or micro business carriers because it is simply a repeal of unnecessary rules. In accord with the Government Code §2006.002(c), 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 and, so, does not constitute a taking or require a takings impact assessment under 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 28, 2013, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Godwin Ohaechesi, Director of Company Licensing and Registration, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period.

The commissioner will consider the proposed repeal of §§3.1701 - 3.1717 and new §§3.1701 - 3.1703, 3.1720 - 3.1730, 3.1740 - 3.1744, and 3.1760 in a public hearing under Docket No. 2748 scheduled for January 29, 2013, at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The repeal is proposed pursuant to HB 2277, 82nd Legislature, Regular Session, effective September 1, 2011, and Insurance Code §36.001. SECTION 17 of HB 2277 repealed Insurance Code Chapter 1111, Subchapter A. Insurance Code Chapter 1111A was added by HB 2277. Section 1111A.015 of the Insurance Code provides that the commissioner may adopt rules implementing Chapter 1111A and regulating the activities and relationships of providers, brokers, insurers, and their authorized representatives. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code Chapter 1111A.

§3.1701. Purpose and Severability.

§3.1702. Definitions.

§3.1703. Application for Certificate of Registration for Viatical or Life Settlement Providers, Provider Representatives, or Brokers; Fees.

§3.1704. Renewal; Fees.

§3.1705. Reporting Requirements.

§3.1706. Form Filing Requirements and Approval, Disapproval, or Withdrawal of Forms.

§3.1707. Advertising, Sales and Solicitation Materials; Filing Prior to Use.

§3.1708. Required Disclosure.

§3.1709. Application and Contract Forms: Required Provisions and Escrow/Trust Agreements.

§3.1710. Prohibited Practices Relating to Advertising and Solicitation; Applications and Contracts.

§3.1711. Payment of Commissions or Other Forms of Compensation: Disclosure and Prohibited Practices.

§3.1712. Contacting the Viator, Life Settlor, or Owner for Health Status Inquiries: Limits and Prohibited Practices.

§3.1713. Assignment, Sale, or Transfer of Policies: Disclosure.

§3.1714. Confidentiality.

§3.1715. Prohibition Against Doing Business with an Unregistered or Unlicensed Viatical or Life Settlement Provider, Provider Representative, or Broker, Escrow Agent or Trustee.

§3.1716. Denial, Suspension, or Revocation of Certificate of Registration; Enforcement.

§3.1717. Examinations.

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 December 11, 2012.

TRD-201206365
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 463-6326

SUBCHAPTER R. LIFE SETTLEMENT

INTRODUCTION. The Texas Department of Insurance (TDI) proposes new 28 TAC Chapter 3, Subchapter R, §§3.1701 - 3.1703, 3.1720 - 3.1730, 3.1740 - 3.1744, and 3.1760, concerning life settlements. The proposed rules include the licensing of life settlement brokers and providers, regulation of life settlement contracts, and annual data reporting requirements.

The new subchapter is necessary to implement House Bill 2277, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011. House Bill 2277 amended Subtitle A, Title 7, Insurance Code by adding new Chapter 1111A and repealing Insurance Code Chapter 1111, Subchapter A. In conjunction with this proposal, TDI is proposing the repeal of existing 28 TAC Chapter 3, Subchapter R, §§3.1701 - 3.1717, concerning viatical and life settlements, also published in this issue of the *Texas Register.* Section 1111A.015 authorizes the commissioner to adopt rules necessary to implement Chapter 1111A and regulate the activities and relationships of providers,

brokers, insurers, and their authorized representatives. These proposed new rules implement the Life Settlements Act.

TDI posted on its website an informal concept paper and proposed new rules concerning life settlements on April 27, 2012. In the informal posting, TDI requested comments on the substance of the draft rules, the accuracy of TDI's estimates of costs to comply with the draft rules, and what costs certain draft provisions would entail. On May 11, 2012, TDI held a public meeting to receive comments relating to the informal rule text and cost note estimates. TDI appreciates all comments received and discussions held during the drafting process.

The structure of the proposed new rule is as follows: Division 1 provides the general provisions of proposed Subchapter R, including purpose and severability, applicability and scope, and definitions. Division 2 provides forms; procedures for life settlement broker and provider license application, license renewal, and fees; continuing education requirements for brokers; continuing education providers; life agent notification; life expectancy estimators; guidance on what constitutes unauthorized insurance; fiduciary duty; record maintenance; and health status verifications. The division contains requirements for continuing education, life settlement provider maintenance of records, guidance on what constitutes unauthorized insurance relating to life settlements, and who may verify insured health status. Division 3 provides form filing requirements; required life settlement form provisions; the shopper's guide; prohibited life settlements; and requirements regarding advertising, sales, and solicitation materials. Finally, Division 4 specifies the requirements for the annual report that life settlement providers must submit to TDI.

The following section-by-section summary provides greater detail.

DIVISION 1. General Provisions.

Section 3.1701 provides the purpose of the subchapter and also includes a severability provision.

Section 3.1702 specifies the applicability and scope of the subchapter. In accord with Insurance Code §1111A.015(c) and §1111A.021(2), the section specifies when the subchapter is not applicable.

Section 3.1703 provides the definitions for the subchapter. The definitions provided are from Insurance Code §1111A.002.

DIVISION 2. License Application and Renewal; Course and Training Requirements; Maintenance of Records.

Section 3.1720 specifies the licensing and notification forms proposed for adoption by reference in this division. The forms include an Application for a Life Settlement Provider or Broker License form; Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form; Life Agent Notification to TDI to Act as a Life Settlement Broker form; and Biographical Affidavit for Life Settlement Providers or Brokers form. The section includes information on where to obtain and submit the forms. Insurance Code §1111A.003(b) requires an application for a broker or provider license be made to TDI by the applicant on a form prescribed by the commissioner.

In accord with Insurance Code §1111A.003(h), the Application for a Life Settlement Provider or Broker License form adopted by reference by §3.1720(a) specifies the information the commissioner requires that an applicant provide. Under §3.1721(c) the form requires basic contact information from the applicant. Additionally, the form requires the certification for the state of domicile, designation of agent for service of process, an acknowledgement and acceptance of appointment as agent for service of process, a certificate of status from the Office of the Texas Secretary of State, and if not domiciled in Texas, a consent to jurisdiction. This section also requires filing of a list of officers, directors, shareholders owning 10 percent or more of the entity, and key employees. Officers, directors, shareholders, and key employees must submit fingerprints. The form provides instructions and a checklist to assist in the application. Life settlement providers must also submit a plan of operations in accord with §1111A.003(j)(1). Both life settlement brokers and providers must submit an anti-fraud plan required by §1111A.003(j)(5) as specified by §1111A.022.

Under §3.1720(b), the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form adopted by reference specifies the information the commissioner requires that a licensee provide to renew its license. Licensees must use the form to submit material changes in information. Additionally, the form requires the certification for the state of domicile, designation of agent for service of process, an acknowledgement and acceptance of appointment as agent for service of process, a certificate of status from the Office of the Texas Secretary of State, and if not domiciled in Texas, a consent to jurisdiction.

Under §3.1720(c), the Life Agent Notification to TDI to Act as a Life Settlement Broker form adopted by reference prescribes the method that a life insurance agent must use to notify the commissioner when the agent is acting as a broker under §1111A.003(d). The notification includes an acknowledgement by the life insurance agent that the agent will operate as a broker in accord with Chapter 1111A. Agents must sign and notarize the form, and notification requires an initial fee of $50. Subsequent biennial renewal is free.

Under §3.1720(d), the applicant must complete the Biographical Affidavit for Life Settlement Providers or Brokers form adopted by reference as an attachment to the Application for a Life Settlement Provider or Broker License and Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker forms. Note that the form includes a fingerprint requirement specified in Insurance Code §801.056 as required by §1111A.025(2). The form requires signing and notarizing.

Section 3.1721 specifies the procedures and requirements for life settlement broker and provider license application and establishes the required fees life settlement brokers and providers must pay to TDI. Insurance Code §1111A.003 states the licensing requirements, requires the fees for a provider license be reasonable, and limits the fees for a broker license to the same as those for an insurance agent. Section 3.1721(k) requires life settlement brokers and providers to submit an application for license within 30 days of the adoption of this subchapter, including life settlement brokers or providers operating under a temporary license or operating under a certificate of authority issued prior to September 1, 2011. Note that, under §3.1721(k), the submission of the application allows for continuity of operations while TDI reviews the application, but the application must be submitted not later than 30 days after the effective date of this subchapter.

Section 3.1722 specifies the procedures and requirements for life settlement broker and provider license renewal application, change of information, and fees. The section also establishes the requirements for providing TDI current information if there is a material change to any information provided in the license

application. Subsection (f) specifies a procedure for the surrender or nonrenewal of a life settlement provider license. The effect of surrender of a life settlement broker or provider license is specified in subsection (g). Renewing life settlement brokers and providers do not need to resubmit fingerprints already provided to TDI. The section addresses waiver of requirements under §3.1722 due to insolvency. Insurance Code §1111A.025(5) provides that Chapter 404, Subchapter B applies to a person engaged in the business of life settlements. Additionally, there are nonrefundable and nontransferable fees of $50 for renewal of a life settlement broker license and $100 for renewal of a life settlement provider license.

Section 3.1723 provides the continuing education and training requirements that life settlement brokers must fulfill under Insurance Code §1111A.003(p). The section also requires entities with life settlement broker licenses to ensure the proper training for their employees conducting the business of life settlements. Section 3.1723(c) specifies exempt persons. The section also includes provisions regarding credit toward other licensees or for out of state courses, a requirement to maintain proof of continuing education completion, and fines for insufficient continuing education.

Section 3.1724 sets out provisions for continuing education providers that want to offer life settlement broker continuing education. Continuing education providers must comply with §§19.1005, 19.1007, 19.1008 - 19.1011, and 19.1014 of Chapter 19 of this title.

Section 3.1725 states the procedure and requirements for licensed life insurance agents to provide notice to TDI when they are providing the services of a life settlement broker. Insurance Code §1111A.003(d) requires that the notification must include an acknowledgement by the life insurance agent that the agent will operate as a broker in accord with Chapter 1111A. Finally, the section puts life insurance agents on notice that a violation of Chapter 1111A or this subchapter may lead to revocation or other sanctions on their life insurance agent license.

Section 3.1726 provides the provisions from which a broker who acts only as a life expectancy estimator are exempt. Insurance Code §1111A.026 allows the commissioner to exempt additional provisions if the commissioner finds that the application of those provisions to the broker is not necessary for the public welfare. This section requires periodic renewal of the notification.

Section 3.1727 clarifies how Insurance Code §101.051 functions in the context of life settlements with respect to statutory unauthorized insurance provisions. Insurance Code Chapter 101 applies to persons engaged in the business of life settlements under §1111A.025 and §1111A.003(q).

Section 3.1728 provides specificity regarding one portion of the fiduciary duty a life settlement broker owes to an owner. The section is consistent with the definitions of "broker" and "life settlement contract" found in Insurance Code §1111A.002. The section clarifies that a life settlement broker must not negotiate a life settlement contract that would result in less money paid to the policy owner than the applicable cash surrender value or accelerated death benefit at the time of application for a life settlement contract. The section also prohibits life settlement brokers from exclusively negotiating with a single life settlement provider.

Section 3.1729 provides a maintenance of records requirement for life settlement brokers and providers. This requirement will assist TDI in its examinations under Insurance Code §1111A.007 and enforcing §1111A.017 and §1111A.025(2). The section provides that a life settlement broker or provider must keep copies of all life settlement contracts for five years from the execution of the contract. Life settlement brokers and providers may opt to keep such documents longer than five years.

Section 3.1730 specifies who may verify the health status of an insured. The section is consistent with Insurance Code §1111A.006 and §1111A.012(a)(13). TDI proposes the section to provide guidance for authorized representatives. The section provides that an authorized representative must have a written delegation from a currently licensed life settlement broker or provider in order to perform health status monitoring.

DIVISION 3. Form Filing and Usage Requirements.

Section 3.1740 provides the form filing requirements and procedures for the approval, disapproval, and withdrawal of forms. The section specifies the certifications required to be included with the form filing. Section 3.1740 provides for requests for corrections and additional information. The section also provides a method for a life settlement broker or provider to request a hearing on receiving notification of disapproval of a form. The section also provides the proposed fees.

Generally, §3.1740 is based on the form filing requirements for life insurance forms in Chapter 3, Subchapter A, of this title. Under §1111.005(a), a person may not use any form of life settlement contract in this state unless the form has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts. Life settlement contracts, disclosures, and verifications of coverage must be filed for review and approval prior to use. Other forms may be submitted as file and use. Subsection 3.1740(o) specifies the filing fees for filing a complete life settlement contract, with forms included; separate individual forms; resubmission of a previously disapproved form; and filing a previously withdrawn form. A life settlement contract may contain multiple forms and if filed together under one filing, requires only a single $100 filing fee. If the forms are filed separately, each filing will have a filing fee as specified in §3.1740(o). This section proposes to adopt by reference the Transmittal Checklist for Life/Health Rate and Form Filings for the submission of life settlement forms.

Section 3.1741 specifies required provisions that apply to life settlement forms. The section contains requirements for life settlement contracts generally and includes specific content requirements for escrow and trust, medical release, policy release, power of attorney, and verification of coverage forms. Power of attorney forms apply only to medical information. For purposes of the rule, medical information can include copies of the insured's death certificate. The section also provides requirements for disclosures to the policy owner if the contract includes a retained ownership provision and additional requirements for life settlement contracts involving premium finance loans.

Section 3.1742 requires the delivery of a shopper's guide during the solicitation process. Insurance Code §1111A.012(a) requires a buyer's guide or similar consumer advisory package as prescribed by the commissioner. The section proposes adoption by reference of the shopper's guide titled "Important Information You Should Know Before Entering Into a Life Settlement", which contains useful consumer information in a question and answer format.

Section 3.1743 specifies that the minimum value of a life settlement offer must be based on the definition of "life settlement contract" as defined by Insurance Code §1111A.002(11). In accord with §1111A.015(b), this provision does not establish a price or fee for the sale or purchase of a life settlement contract.

Section 3.1744 provides that a life settlement broker or provider must file all advertising and solicitation materials used to market life settlements or the licensee's services in this state. The proposed rule does not require the approval of the advertising material, only its submission prior to use or dissemination. Note that, under §1111A.002, the term "advertisement" is defined and includes communication transmitted on the Internet.

DIVISION 4. Annual Reporting.

Section 3.1760 prescribes the reporting requirements for the annual statement all life settlement providers must provide not later than March 1 of each year. Insurance Code §1111.006 specifies the required data for the annual report. Providers must submit the annual report electronically in an Excel spreadsheet via email.

FISCAL NOTE. Godwin Ohaechesi, director of Company Licensing and Registration, 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 government and no impact on local governments because of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy because of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Ohaechesi has also determined that for each year of the first five years the proposal is in effect, there should be public benefits because of the enforcement and administration of the rule. There will also be potential costs for persons required to comply with the proposal. TDI, however, drafted the proposed rules to maximize public benefits, consistent with the intent of Insurance Code Chapter 1111A, while mitigating costs.

The anticipated public benefits will be the efficient administration of Insurance Code Chapter 1111A. Implementing the necessary rules for Chapter 1111A will enable the orderly transaction of life settlements so that policy owners have adequate information when they execute a life settlement contract under the consumer protections of Chapter 1111A. Life settlement brokers and providers will also benefit from the administration of licensing rules.

The cost to persons required to comply with the proposal will vary based on the type and conduct of the person complying. Life settlement brokers and providers will face costs to submit license applications, comply with continuing education requirements, submit life settlement contract forms for approval, and forego prohibited conduct. Life settlement providers must also submit data to TDI annually. Life insurance agents required by Chapter 1111A to submit notice to TDI when acting as a life settlement broker will face costs to submit that notice. Continuing education providers will face costs related to their registration as course providers.

TDI does not believe that the proposal will have an adverse effect on small and micro businesses. However, TDI has considered the purpose of Chapter 1111A, which is to regulate life settlements, and has determined that it is neither legal nor feasible to waive the provisions of the proposal for small or micro businesses. TDI solicited cost information in its April 27, 2012, informal rule posting and May 11, 2012, informal stakeholder meeting. TDI prepared and shared estimates as part of the informal posting. TDI did not receive comments on the estimated costs.

TDI has identified four categories of labor reasonably necessary to implement the new subchapter. Life settlement brokers and providers, life insurance agents, and continuing education providers may calculate the total cost of labor for each category by multiplying the number of estimated hours for each cost component by the median hourly wage for each category of labor. The median hourly wage for each category of labor is published online by the Texas Workforce Commission as follows:

(i) a general operations manager or functional director: $58.64 (www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=5241&occcode=11-1021&compare=2);

(ii) a computer programmer: $38.60 (www.texasindustryprofiles.com/apps/win/eds.php?indcode=5241&indclass=8);

(iii) an administrative assistant: $21.69 (www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=5241&occcode=43-6011&compare=2);

(iv) a staff attorney: $51.56 (www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=5241&occcode=23-1011&compare=2);

TDI estimates that implementation of the new subchapter will likely impact a life settlement broker or provider, continuing education provider, or life insurance agent's overall printing, copying, mailing, and transmitting costs. According to the United States Postal Service business price calculator, available at dbcalc.usps.gov, the cost to mail machinable letters in a standard business mail envelope with a weight limit of 3.3 ounces to a standard five-digit ZIP code in the United States is 26 cents. With the weight limit of 3.3 ounces, approximately 18 pages could be sent per envelope for the 26 cents. This estimate is based on an anticipated use of six pages of standard printing paper, with a total weight of one ounce. TDI has determined that the cost of a standard business envelope is 1.6 cents. TDI further estimates that the cost of printing or copying is between 6 and 8 cents per page.

It is not feasible for TDI to estimate the total amount of increased printing, copying, mailing, and transmitting costs attributable to compliance with the proposed new subchapter. There are numerous factors involved that are not suited to reliable quantification by TDI, including factors like the number of policies settled, the number of employees in an entity licensee, and the number of forms submitted for review. TDI estimates that each affected entity has the information necessary to determine its individual printing, copying, mailing, and transmitting costs necessary to meet the requirements of the subchapter, and TDI has identified factors throughout the sections that may contribute to an increased cost for printing, copying, mailing, and transmitting where applicable.

TDI has determined that the actual cost of implementation could be significantly lower than estimated because a life settlement broker or provider, continuing education provider, or life insurance agent may already have significant experience in complying with either the prior rules or statute, or have been working with TDI to be in compliance with Insurance Code Chapter 1111A since its effective date. Many of the requirements of the proposed rule may also be substantially less costly than the estimates set forth in this proposal in the case of a life settlement broker or provider, continuing education provider, or life insurance

agent already holding a certificate of registration or temporary license. Many of the proposed requirements for licensees are similar to regulations applicable under the former statute, and TDI estimates that many times cost savings can be had where licensees have already collected the required information for temporary applications or forms already substantially in compliance.

Estimated Costs for Persons Required to Comply with the Proposal.

Costs related to license application. In accord with Insurance Code §1111A.003, persons must hold a license as a life settlement broker or provider unless they meet certain exceptions. Licensure requires the submission of a license application to TDI. TDI bases its estimate of costs for a life settlement broker or provider to comply with §3.1721 on labor costs associated with completing the forms, costs for fingerprinting, the application fee, and costs for the printing and submission of the forms themselves.

TDI estimates that, to submit a license application, a life settlement broker or provider may incur costs related to managerial and support staff necessary to complete the application, including the services of administrative assistants, general operations managers, and attorneys. The number of hours spent completing and submitting the application forms will depend on the size and number of employees of the life settlement broker or provider. TDI anticipates that life settlement broker or provider applicants may require up to 10 hours of time for an administrative assistant, and up to 10 hours of time for general management. TDI estimates a life settlement broker or provider applicant may require an estimated one to two hours for an attorney to review the application form. TDI estimates that the labor cost to an applicant may vary depending on whether the life settlement broker or provider elects to have an administrative assistant, a general operations manager, or a combination of both, complete and file the application. The applicant, however, has the information necessary to determine its staffing needs to comply with proposed §3.1721.

Additional costs for proposed §3.1721 also apply. The cost per person to have fingerprints taken is $34.25 plus a $9.95 fingerprint collection fee ($44.20 total) per person. TDI anticipates printing costs to be approximately 6 to 8 cents per page and mailing costs to be about 28 cents. The completion of the form also requires the services of a notary public. TDI anticipates that each life settlement broker or provider applicant has the information necessary to determine its individual printing and mailing costs associated with compliance with proposed §3.1721. Finally, each life settlement broker or provider applicant must submit the application fee of $50 for a life settlement broker or $100 for a life settlement provider required by proposed §3.1721. The total cost to comply with §3.1721 could also vary depending on the applicant's administrative processes.

Costs related to license renewal. In accord with Insurance Code §1111A.003, a person may renew a life settlement broker or provider license on the second anniversary of the date of issuance. Proposed §3.1722 requires the submission of a renewal application to TDI. TDI bases its estimate of costs for a life settlement broker or provider to comply with §3.1721 on the labor costs associated with completing the forms, the renewal fee, and the costs for the printing and submission of the forms themselves.

TDI estimates that, to submit a renewal application, a life settlement broker or provider may incur costs related to managerial and support staff necessary to complete the application, including the services of administrative assistants and general operations managers. TDI anticipates that a renewing licensed life settlement broker or provider will require up to five hours of work from an administrative assistant and up to five hours of work from a general operations manager. TDI estimates that the labor cost to a renewing licensee may vary depending on whether the life settlement broker or provider elects to have an administrative assistant, a general operations manager, or a combination of both complete and file the application. Each renewing licensee, however, has the information necessary to determine its staff needs to comply with proposed §3.1722.

Additional costs for proposed §3.1722 also apply. TDI anticipates printing costs to be approximately 6 to 8 cents per page and mailing costs to be about 28 cents. The forms also require the services of a notary public. The total cost to comply with §3.1722 could also vary depending on a licensee's administrative processes.

Finally, each life settlement broker or provider applicant must submit the renewal application fee of $50 for a life settlement broker or $100 for a life settlement provider required by proposed §3.1722. These costs would recur every two years. Additional costs may apply if a licensed life settlement broker or entity must submit a change of information if there is a material change to any information provided in the application for a license. These costs would be similar to the costs for biennial renewal.

Costs related to continuing education. In accord with Insurance Code §1111A.003(p), a life settlement broker must complete 15 hours of training on a biennial basis. Proposed §3.1723 states the individual's and entity's continuing education requirement. TDI estimates that the costs for each person required to complete 15 hours of training under proposed §3.1723 will range up to $300 per two-year licensing period. TDI bases this estimate on an anticipated range of $5 to $20 per credit hour of continuing education. The costs for the continuing education will depend on the market that develops to serve this need for continuing education. The total cost to comply with §3.1723 could also vary depending on the licensee's administrative processes.

Costs related to continuing education providers. The existence of continuing education requirements for life settlement brokers under Insurance Code §1111A.003(p) necessitates continuing education providers to certify courses with TDI. TDI bases its estimate of costs for a continuing education provider to comply with §3.1724 on the labor costs associated with registering a course under the applicable rules, and costs for the printing and submission of the course registration.

Though each continuing education provider has the information needed to estimate its individual costs, TDI estimates that, to register a course, a continuing education provider may incur costs related to managerial and support staff necessary to complete the application including the services of administrative assistants, general operations managers, and attorneys. TDI anticipates that a continuing education provider registering courses with TDI will require up to five hours of work from an administrative assistant, up to five hours of work from a general operations manager, and up to one hour of work from an attorney to review each course. TDI estimates that the labor cost to register a course may vary depending on whether the continuing education provider elects to have an administrative assistant, a general operations manager, attorneys, or a combination of each to complete and file the course registration.

Additional costs for proposed §3.1724 also apply. TDI anticipates printing costs to be approximately 6 to 8 cents per page and mailing costs not to exceed 28 cents. The total cost to comply with §3.1724 could also vary depending on the continuing education provider's administrative processes.

Additional costs may apply if a continuing education provider is not yet authorized to provide any continuing education in Texas under Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), of this title. Costs to register as a continuing education provider depend on compliance with those existing rules. Each continuing education provider has the information necessary to determine its staffing needs to comply with proposed §3.1724. Note that continuing education providers are not required to offer life settlement related continuing education and can otherwise act as continuing education providers without complying with this proposed section.

Costs related to life insurance agent notification. In accord with Insurance Code §1111A.003(c), persons licensed as life insurance agents may operate as life settlement brokers if they notify the commissioner not later than 30 days after the first date of operating as a broker. Proposed §3.1725 requires the submission of a notification to TDI. TDI bases its estimate of costs for a life insurance agent to comply with §3.1725 on the labor costs associated with submission of a notification to TDI registration. There are over 100,000 agents with life, accident, and health licenses in Texas.

TDI anticipates that a life insurance agent providing notification under §3.1725 may require up to two hours of work from an administrative assistant and up to two hours of work from a general operations manager per notification submitted. TDI estimates that the labor cost to provide notification may vary depending on whether the life insurance agent elects to have an administrative assistant, a general operations manager, or a combination of both complete and file the notification. Each life insurance agent, however, has the information necessary to determine its staffing needs to comply with proposed §3.1725.

Additional costs for proposed §3.1725 also apply. TDI anticipates printing costs to be approximately 6 to 8 cents per page and mailing costs not to exceed 28 cents. The form also requires the services of a notary public. The total cost to comply with §3.1725 could also vary depending on the life insurance agent's administrative processes.

Finally, each life settlement broker or provider must submit the initial notification fee of $50 required by proposed §3.1725. Subsequent biennial notification sent when the agent's license is renewed has no fee. These labor, printing, and mailing costs also apply for the biennial notification required under proposed §3.1725 when the agent's life insurance agent license is renewed.

Costs related to maintenance of records. Proposed §3.1729 requires life settlement brokers and providers to maintain a copy of the life settlement contract, verification of coverage, and any life expectancy estimate for each settled policy for five years from the date of execution of the contract. TDI bases its estimate of costs for life settlement brokers or provide's to comply with §3.1729 on the labor costs associated with maintaining a complaint records retention schedule.

TDI estimates that a life settlement broker or provider could incur an average annual cost of 10 to 20 hours of administrative time in connection with copying, organizing, and saving the required records. Each life settlement broker or provider has the information necessary to determine its staffing needs to comply with §3.1729.

Costs related to life settlement form submission. In accord with Insurance Code §1111A.005, a life settlement broker or provider must submit any form of life settlement contract in this state in a manner that conforms with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts. TDI bases its estimate of costs for life settlement brokers or providers to comply with §3.1740 on the labor costs associated with submission of forms for approval to TDI and costs for the printing and submission of the forms.

TDI estimates that a life settlement broker or provider could incur an average annual cost of 10 to 20 hours of legal service from a lawyer in connection with drafting, reviewing, and representing the life settlement broker or provider in the form review and approval process. Further administrative work may be required, including up to 10 hours of time from administrative assistants and 10 hours of time from general operations managers. TDI estimates that the labor cost to submit forms may vary depending on whether the life settlement broker or provider elects to have an administrative assistant, a general operations manager, a lawyer, or a combination of each, draft and file the life settlement contract forms. Each life settlement broker or provider, however, has the information necessary to determine its staff needs to comply with proposed §3.1740.

Additional costs for proposed §3.1740 also apply. TDI anticipates printing costs to be approximately 6 to 8 cents per page and mailing costs not to exceed 28 cents. The total cost to comply with §3.1740 could also vary depending on the life settlement broker's or provider's administrative processes.

Finally, each life settlement broker or provider must submit the form filing fee of $100 required by §3.1740.

Costs related to distributing a shopper's guide. In accord with Insurance Code §1111A.012(a)(10), the commissioner may require delivery of a buyer's guide or a similar consumer advisory package in the form prescribed by the commissioner to owners during the solicitation process. TDI bases its estimate of costs for life settlement brokers or providers to comply with §3.1742 on the labor costs associated with supplying the shopper's guide and costs for the printing and submission of the shopper's guide.

TDI estimates that a life settlement broker or provider could require up to two hours of work from an administrative assistant. TDI anticipates that life settlement brokers and providers will be able to include the form in their usual process of delivering informational materials to prospective life settlement contract sellers. The additional labor costs associated with an administrative assistant may be lower if the broker or provider includes the distribution of the shopper's guide with other documents in the solicitation process as an automated or routine process.

Additional costs for §3.1742 also apply. TDI anticipates these printing costs to be approximately 6 to 8 cents per page and mailing costs not to exceed 28 cents. The total cost to comply with §3.1742 could also vary depending on the life settlement broker's or provider's administrative processes. TDI anticipates that each life settlement broker or provider submitting life settlement contract forms has the information necessary to determine its individual printing and mailing costs associated with compliance with §3.1742.

Costs related to submitting advertising. In accord with Insurance Code §1111A.005(d), a life settlement broker or provider must submit advertising to TDI. These filings are for informational purposes. TDI's estimate of costs for a life settlement broker or provider to comply with §3.1744 is based on the labor costs associated with the submission of advertising to TDI and costs for the printing and submission of the advertising forms.

TDI estimates that a life settlement broker or provider could incur costs for regular administrative work, including up to five hours of time from administrative assistants per month to submit advertising. TDI estimates that the labor cost to submit advertising may vary depending on the amount of advertising submitted. Each life settlement broker or provider, however, has the information necessary to determine its staffing needs to comply with proposed §3.1744.

Additional costs for §3.1744 also apply. TDI anticipates printing costs to be approximately 6 to 8 cents per page and mailing costs not to exceed 28 cents. The total cost to comply with §3.1744 could also vary depending on the life settlement broker's or provider's administrative processes.

Costs related to annual data reporting. In accord with Insurance Code §1111A.006, a life settlement provider must submit an annual data report to TDI. TDI bases its estimate of costs for life settlement providers to comply with §3.1760 on the labor costs associated with reporting of the data to TDI.

TDI estimates that a life settlement provider could incur costs for up to five hours of time from a computer programmer per year. Further administrative work may be required, including up to two hours of time from administrative assistants and up to two hours of time from general operations managers per month to monitor settlement activity and record the appropriate data. Additionally, the annual report requires use of Microsoft Excel. The industry commonly uses this software and likely will not require additional expenditures by life settlement providers. Should the purchase of the software be necessary, the program may be purchased for approximately $229.99 retail based on information the department obtained online from various sellers. Each life settlement provider, however, has the information necessary to determine its staffing needs to comply with §3.1760.

TDI does not anticipate costs for transmission of the annual data reports due to email submission. The total cost to comply with §3.1760 could also vary depending on the life settlement provider's administrative processes.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), TDI has determined that the proposed new rules may have an adverse economic effect on 250 to 300 small or micro businesses that must comply with the proposed rules. The cost of compliance with the proposal will not vary between large businesses and small or micro businesses on the basis that a business is a large, small, or micro business, and TDI's cost analysis and resulting estimate is equally applicable to small or micro businesses. The total cost to large businesses and small or micro businesses to comply with the new requirements is not dependent on the size of the affected person. TDI anticipates that most of these small and micro businesses are licensed life insurance agents providing notification that they intend to act as life settlement brokers. TDI estimates that an individual person's particular cost for each component will vary based on multiple factors as described in the Public Benefit/Cost Note portion of this proposal.

The estimate for the number of small or micro businesses comes from TDI's experience in implementing the repealed Chapter 1111, Subchapter A. At the time that statute was repealed, TDI had about 270 life settlement brokers holding certificates of authority and another 50 life settlement providers holding certificates of authority. TDI estimates that many of those same entities have or will seek licensure under the Chapter 1111A. Many of the brokers are individual agents, and likely to be small or micro businesses. TDI anticipates that many of those life settlement brokers already have a life insurance agent license or will seek one and will do the business of life settlements through the required life agent notification procedure. Additionally, some of the life settlement providers are also small or micro businesses. Continuing education providers may also be small or micro businesses under the definitions in Government Code.

In accord with the Government Code §2006.002(c-1), TDI has considered other regulatory methods to accomplish the objectives of the proposal that minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to implement Insurance Code Chapter 1111A and regulate the activities and relationships of providers, brokers, insurers, and their authorized representatives.

The other regulatory methods considered by TDI to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not proposing the chapter; (ii) proposing different requirements for small and micro businesses; and (iii) excluding small and micro businesses from applicability under the new sections included in this proposal.

Not proposing the chapter. As previously noted, the purpose of this proposal is to implement the necessary rules for Chapter 1111A to enable the orderly transaction of life settlements so that policy owners will be well informed and able to execute a life settlement contract under the consumer protections of Chapter 1111A. Life settlement brokers and providers, life agents, and continuing education providers will also benefit from the administration of licensing rules. If the rules were not proposed, no rules would provide regulatory requirements for the life settlement contracts applicable to Chapter 1111A. Outdated rules that address the former Chapter 1111, Subchapter A, must be repealed. If TDI does not create new rules, the lawful transaction of life settlements would be hindered. This, in turn, would frustrate the intent of HB 2277 to allow life settlement providers to purchase certain life insurance policies. Finally, Chapter 1111A requires rules to establish applications, fees, form review, and annual reporting.

For this reason, TDI has rejected this option.

Proposing different requirements for small and micro businesses. TDI has worked with stakeholders since the passage of HB 2277 to develop the proposed rules applicable to life settlement brokers and providers, life agents, and continuing education providers. TDI made changes to earlier drafts of the proposed subchapter based on input from stakeholders and stakeholder groups, including groups that have among their membership small businesses. TDI believes that proposing different standards than those included in this proposal would not provide a better option for small or micro businesses. Also, TDI believes that the potential harm of lessened regulatory requirements to consumers and providers would outweigh the potential benefit to small or micro businesses. The proposed requirements include provisions addressing license application

contents, continuing education, and life settlement contract review. Since many of the regulatory requirements are not reflected in settlement contracts, consumers and providers would not know what different regulations a small or micro business insurer would be following.

In addition, exempting small and micro businesses from these requirements or reducing these requirements could result in perceived inadequacy of regulation. Policy owners would be unable to make an adequate comparison between life settlement brokers and providers. Some informed policy owners may recognize that without common rules, small and micro businesses could be subject to different levels of regulatory scrutiny. Other policy owners less informed might not recognize that small and micro businesses were not subject to the same regulatory scrutiny. However, it is likely owners would have difficulty recognizing which entities are large and small or to recognize the differences in the regulatory requirements applicable to the small versus large entities.

For these reasons, TDI has rejected this option.

Excluding small and micro businesses from applicability under the new sections included in this proposal. As addressed in the Public Benefit/Cost Note portion of this proposal, anticipated costs under the proposal are the result of the new requirements applicable to life settlement brokers and providers, life agents, and continuing education providers. If small and micro businesses were excluded from applicability under the sections applicable to these entities, they would not face the economic impacts. However, if small and micro businesses were excluded from applicability under the new sections applicable to these entities, they would not be subject to the licensing, form filing, data collection, or other consumer protections included in the proposed rules. TDI believes that the lack of these consumer protections would create potential harm for owners and insureds that would outweigh the potential benefit to small or micro businesses.

Additionally, failure to adopt rules applicable to small and micro businesses would be contrary to the Insurance Code. For example, providing disparate life settlement contract form filing fees for small and micro businesses would conflict with Insurance Code §1111A.005, which requires the commissioner to adopt filing rules in a manner that conforms with the filing procedures for life insurance forms. Form filings under Insurance Code Chapter 1701 do not waive fees for small and micro business.

For these reasons, TDI has rejected this option.

TAKINGS IMPACT ASSESSMENT. TDI has determined that this proposal does not affect any private real property interests 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 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 28, 2013, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Godwin Ohaechesi, Director of Company Licensing and Registration, Mail Code 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider proposed new §§3.1701 - 3.1703, 3.1720 - 3.1730, 3.1740 - 3.1744, and 3.1760 and the repeal of §§3.1701 - 3.1717 in a public hearing under Docket No. 2748 scheduled for January 29, 2013, at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. TDI will consider written and oral comments presented at the hearing.

DIVISION 1. GENERAL PROVISIONS

28 TAC §§3.1701 - 3.1703

STATUTORY AUTHORITY. The new sections are proposed pursuant to Insurance Code Chapter 1111A and §36.001. Section 1111A.015 provides that the commissioner may adopt rules implementing Chapter 1111A and regulating the activities and relationships of providers, brokers, insurers, and their authorized representatives. Section 1111A.003 states that an application for a life settlement broker or provider license must be in a form prescribed by the commissioner and accompanied by a fee in an amount established by the commissioner by rule. Section 1111A.003(d) requires that a life insurance agent notify the commissioner on a form prescribed by the commissioner that the agent is acting as a broker and pay any applicable fee to be determined by the commissioner by rule. Section 1111A.005(a) states that a person may not use any form of life settlement contract in this state unless the form has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts. Section 1111A.025(b) states that the commissioner may exempt a broker who acts only as a life expectancy estimator from other provisions of this chapter if the commissioner finds that the application of those provisions to the broker is not necessary for the public welfare. Section 1111A.011(a) states that a licensed life settlement broker or provider must comply with all advertising and marketing laws under Chapter 541 and rules adopted by the commissioner that are applicable to life insurers or to license holders under this chapter. Section 1111A.003(l) provides that life settlement providers file with TDI not later than March 1 of each year an annual statement containing the information the commissioner prescribes by rule. Similarly, §1111A.006(a) states that each provider shall file with the commissioner no later than March 1 of each year an annual statement containing the information the commissioner prescribes by rule. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

§3.1701: Insurance Code Chapter 1111A

§3.1702: Insurance Code Chapter 1111A

§3.1703: Insurance Code §1111A.002 and §1111A.015

§3.1701. Purpose and Severability.

(a) Purpose. Under Insurance Code Chapter 1111A, the Life Settlements Act, the commissioner implements this subchapter to:

(1) establish life settlement requirements concerning license applications, renewal, continuing education, and disclosures;

(2) establish form filing requirements for life settlement contracts;

(3) prohibit or require certain contractual provisions in life settlement contracts; and

(4) establish annual reporting requirements for life settlement providers.

(b) Severability. If a court of competent jurisdiction holds that any provision of this subchapter or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application. To this end, the provisions of this subchapter are severable.

§3.1702. Applicability and Scope.

This subchapter:

(1) applies to all persons involved in the business of life settlements in this state as specified in Insurance Code Chapter 1111A; and

(2) does not regulate the actions of an investor providing money to a life settlement provider, and does not preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued under the law.

§3.1703. Definitions.

In this subchapter, the following terms have the meanings assigned by Insurance Code §1111A.002, unless the context clearly indicates otherwise:

(1) advertisement;

(2) broker;

(3) business of life settlements;

(4) insured;

(5) life expectancy;

(6) life insurance agent;

(7) life settlement contract;

(8) net death benefit;

(9) owner;

(10) person;

(11) policy;

(12) premium finance loan;

(13) provider;

(14) purchaser; and

(15) settled policy.

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 December 11, 2012.

TRD-201206366
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 463-6326

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DIVISION 2. LICENSE APPLICATION AND RENEWAL; COURSE AND TRAINING REQUIREMENTS; MAINTENANCE OF RECORDS

28 TAC §§3.1720 - 3.1730

STATUTORY AUTHORITY. The new sections are proposed pursuant to Insurance Code Chapter 1111A and §36.001. Section 1111A.015 provides that the commissioner may adopt rules implementing Chapter 1111A and regulating the activities and relationships of providers, brokers, insurers, and their authorized representatives. Section 1111A.003 states that an application for a life settlement broker or provider license must be in a form prescribed by the commissioner and accompanied by a fee in an amount established by the commissioner by rule. Section 1111A.003(d) requires that a life insurance agent notify the commissioner on a form prescribed by the commissioner that the agent is acting as a broker and pay any applicable fee to be determined by the commissioner by rule. Section 1111A.005(a) states that a person may not use any form of life settlement contract in this state unless the form has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts. Section 1111A.025(b) states that the commissioner may exempt a broker who acts only as a life expectancy estimator from other provisions of this chapter if the commissioner finds that the application of those provisions to the broker is not necessary for the public welfare. Section 1111A.011(a) states that a licensed life settlement broker or provider must comply with all advertising and marketing laws under Chapter 541 and rules adopted by the commissioner that are applicable to life insurers or to license holders under this chapter. Section 1111A.003(l) provides that life settlement providers file with TDI not later than March 1 of each year an annual statement containing the information the commissioner prescribes by rule. Similarly, §1111A.006(a) states that each provider shall file with the commissioner no later than March 1 of each year an annual statement containing the information the commissioner prescribes by rule. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

§3.1720: Insurance Code §§801.056, 1111A.002, 1111A.003, 1111A.015, 1111A.022, and 1111A.025

§3.1721: Insurance Code §§1111A.002, 1111A.003, and 1111A.015

§3.1722: Insurance Code §§1111A.003, 1111A.004, and 1111A.015

§3.1723: Insurance Code §§1111A.003, 1111A.015, and 1111A.026

§3.1724: Insurance Code §1111A.003 and §1111A.015

§3.1725: Insurance Code §1111A.003 and §1111A.015

§3.1726: Insurance Code §1111A.015 and §1111A.026

§3.1727: Insurance Code §§101.151, 1111A.003, and 1111A.015

§3.1728: Insurance Code §1111A.002 and §1111A.015

§3.1729: Insurance Code §1111A.007 and §1111A.015

§3.1730: Insurance Code §1111A.006 and §1111A.015

§3.1720. Forms.

(a) Application form. The commissioner adopts by reference the License Application for a Life Settlement Provider or Broker form as the application for license for each person engaging in, or desiring to engage in, business as a life settlement broker or life settlement provider in this state.

(b) Renewal, Surrender, or Change of Information form. The commissioner adopts by reference the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form for the renewal, nonrenewal, or surrender of life settlement broker or provider licenses and for use in providing notice to the department of a change to any license holder information or information in an application previously submitted to the department.

(c) Life Agent Notification form. The commissioner adopts by reference the Life Agent Notification to TDI to Act as a Life Settlement Broker form for use by a life insurance agent operating as a life settlement broker.

(d) Biographical Affidavit form. The commissioner adopts by reference the Biographical Affidavit for life settlement providers or brokers form for use as an attachment to the License Application for a Life Settlement Provider or Broker form and as an attachment to the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form, as applicable, for each owner, partner, director, officer, key management personnel, employee having authority to direct the management of the organization, and any person who has ownership of 10 percent or greater of the applicant or the applicant's stock.

(e) Where to find and send forms. The forms adopted in this section may be obtained from and submitted to Company Licensing and Registration, MC 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701, or obtained at the department's website at www.tdi.texas.gov/forms.

§3.1721. License Application; Fees.

(a) Applicant. In this section, "applicant" means a person applying for a life settlement broker or provider license.

(b) License requirements.

(1) A person engaging in business as a life settlement broker or life settlement provider in this state must apply for and obtain a license issued by the department as required by this subchapter, except that:

(A) a person may operate as a life settlement broker without a life settlement broker license if that person has held a life insurance agent license in this state for at least one year and holds an active license, or has held a life insurance agent license in that person's home state for at least one year and is licensed as a nonresident agent in this state. The life insurance agent must notify the department in accord with §3.1725 of this title (relating to Life Insurance Agent Notification) and Insurance Code Chapter 1111A; and

(B) a person may operate as a life settlement broker without a life settlement broker license if that person is a licensed attorney, certified public accountant, or financial planner who is retained in the type of practice customarily performed in a professional capacity to represent the owner and whose compensation for the life settlement transaction is not paid directly or indirectly by the provider or any other person, except the owner.

(2) A life settlement broker or provider is prohibited from concurrently holding more than one license of the same type and in the same legal name.

(3) A life settlement broker or provider engaged in the business of life settlements, subject to the provisions of this subchapter, must apply for issuance of the life settlement broker's or provider's license in the life settlement broker's or provider's legal name and may only act within the scope of authority granted by the license. If a person holds a license authorizing the person to act as a life settlement broker or provider, that person need not obtain an additional license to participate in a registered partnership or corporate entity of the same type in this state, but the partnership or corporate entity with which the person participates must apply for and hold, in its own legal name, a separate license to conduct business as a life settlement broker or provider in this state.

(4) A licensed life settlement broker or provider may have additional offices or do business under assumed names, as that term is defined in §19.901 of this title (relating to Definitions Concerning Conduct of Licensed Agents), without obtaining an additional license. However, the life settlement broker or provider must furnish the department with a list identifying any and all offices from which the life settlement broker or provider will conduct life settlement business and showing any and all assumed names that the life settlement broker or provider will utilize in conducting life settlement business at any of those offices.

(A) Where such a filing is required under the Assumed Business or Professional Name Act, Business and Commerce Code Chapter 71, or any similar statute, the life settlement broker or provider must provide the department with a copy of the valid assumed name certificate reflecting proper registration of each assumed name utilized by the life settlement broker or provider.

(B) A life settlement broker or provider doing business under an assumed name must comply with subsection (c)(5) of this section.

(c) Information required with application. In addition to a complete License Application for a Life Settlement Provider or Broker form, an applicant for a license to engage in business as a life settlement broker or provider must submit the items set forth in paragraphs (1) - (7) of this subsection, as follows:

(1) either:

(A) a certificate of account status issued by the Comptroller of Public Accounts reflecting that the applicant is in good standing or temporary good standing; or

(B) a certification signed by an officer or partner of the applicant attesting that the applicant is not subject to Tax Code Chapter 171;

(2) if a provider, a detailed plan of operation, including, but not limited to the following, where applicable:

(A) history:

(i) a brief history of the applicant since its formation, if an entity;

(ii) a list of all states in which the applicant holds a license or registration as a life settlement provider or viatical settlement provider and the date(s) that the applicant obtained such licensure or registration;

(iii) a list of all states in which the applicant is currently doing business, but in which a license or registration is not required; and

(iv) a list and description of any pending lawsuits or judgments naming the applicant as defendant or co-defendant;

(B) management:

(i) evidence that the applicant has a good business reputation, and a detailed description of the experience, training, or education that qualifies the applicant to conduct the business of life settlements as a life settlement provider; and

(ii) if the applicant is a subsidiary of a parent or holding company, an organizational chart showing the relationship of all related persons and entities; and

(C) marketing plan:

(i) a detailed description of the applicant's marketing plan; and

(ii) the applicant's projected volume of business in Texas and nationwide for the first three years after licensure;

(3) an antifraud plan that meets the requirements of Insurance Code §1111A.022;

(4) a completed Biographical Affidavit form to be used as an attachment to the License Application for a Life Settlement Provider or Broker form for each owner, partner, director, officer, key management personnel, or employee having authority to direct the management of the organization, and any person who has ownership of 10 percent or greater of the applicant or the applicant's stock;

(5) the applicant's legal name, including any assumed name, used by a life settlement broker or provider in the conduct of life settlement business under a license is subject to the requirements of §19.902 of this title (relating to One Agent, One License), except that a separate application is not required for a life settlement broker or provider who conducts business under a single assumed name and registers that name with the department on the life settlement broker's or provider's application for license;

(6) if a business entity, a current copy of its certificate of status from the Office of the Texas Secretary of State; and

(7) if a business entity not domiciled in Texas:

(A) a current copy of its certificate of good standing from the state of its domicile; and

(B) with the license application, a completed appointment of an agent for service of process, unless the applicant has filed with the department the applicant's written irrevocable consent that any action against the applicant may be commenced by service of process on the commissioner. The applicant must attach the completed form to the application for license. The applicant must appoint as the agent for service of process a person with a Texas address who has an established place of business and who can be easily located and served with notices, legal process, and papers.

(d) Application process.

(1) If an applicant for a license to operate as a life settlement broker or provider has complied with all application procedures in this section, the commissioner will issue the applicant a license to engage in business as a life settlement broker or provider unless the commissioner determines that the application should be denied based on any one or more of the factors set forth in Insurance Code Chapter 1111A.

(2) If the commissioner denies the application and the applicant requests a hearing, or if, at any time, the applicant no longer meets the requirements for licensure, the procedure for the denial, renewal, revocation, suspension, annulment, or withdrawal of a license is governed by §1.32 of this title (relating to Licenses).

(3) The department will not accept applications that do not contain all required information or certifications.

(e) License fee. An applicant must submit with each completed application for license at the time of filing a two-year license fee in the amount of $50 for a life settlement broker, or $100 for a life settlement provider. All license fees are nonrefundable and nontransferable, including fees for applications that are denied or incomplete.

(f) Partnership, corporation, or other business entity license. A partnership, corporation, or other business entity may file an application for a license to engage in business as a life settlement broker or provider only if each owner, partner, director, member, officer, and designated employee is named in the application.

(g) Notice of suspension or revocation. A life settlement broker or provider must notify the department of, and must deliver to the department a copy of, any applicable order or judgment not later than the 30th day after the date of the:

(1) suspension or revocation of the life settlement broker's or provider's right to transact business in another state;

(2) receipt of an order or notice of hearing to show cause why the life settlement broker's or provider's license or license in another state should not be suspended or revoked; or

(3) imposition of an administrative or criminal penalty, forfeiture, or sanction on the life settlement broker or provider for the violation of the laws of this state, any other state, or the federal government.

(h) Effect of criminal conduct. An applicant for or holder of a life settlement broker's or provider's license, including each owner, partner, director, member, officer, and any person who has ownership of 10 percent or greater of the applicant or the applicant's stock, is subject to the requirements of Insurance Code §1111A.004 and Chapter 1, Subchapter D, of this title (relating to Effect of Criminal Conduct).

(i) Requirement of additional information. In addition to the information required in this section, the department may ask for other information necessary to determine whether the applicant complies with the requirements of Insurance Code §1111A.003 and this subchapter for purposes of issuing or renewing a life settlement broker's or provider's license. If an applicant does not respond to a request for additional information within 10 days following the date the applicant receives the request, the department will consider the application withdrawn. The applicant can request an extension, but must provide a reasonable basis for the need for additional time.

(j) Material change. If there is a material change to any information provided in the application for license, the life settlement broker or provider must submit written notification of the change to the department not later than 30 days after the date the change occurs, using the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form.

(k) Submission required for existing brokers and providers. A life settlement broker or provider, including one operating under a temporary license or operating under a certificate of authority issued prior to September 1, 2011, must submit an application in accord with this section not later than 30 days after the effective date of this subchapter.

§3.1722. Renewal; Nonrenewal; Surrender; Change of Information; and Fees.

(a) Renewal form. To renew an unexpired life settlement provider's or broker's license, a license holder must submit to the department a completed Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form. The license holder must submit with the renewal application a two-year renewal fee of $50 for a life settlement broker license or $100 for a life settlement provider license. All renewal fees are nonrefundable and nontransferable.

(b) Renewal application requirements. In addition to the completed Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form, a license holder applying for renewal of a life settlement broker's license or provider's license must submit:

(1) if a business entity:

(A) a certificate of account status issued by the Comptroller of Public Accounts reflecting that the licensee is in good standing or temporary standing; or

(B) a certification signed by an officer or partner of the licensee attesting that the licensee is not subject to the Tax Code Chapter 171; and

(2) if a life settlement broker, a certification that the life settlement broker and each owner, partner, director, member, officer, and designated employee named in the application or in any supplement to the application, who perform acts of a life settlement broker under Insurance Code §1111A.002(2), has completed training equivalent to that required of individual brokers under §3.1723 of this title (relating to Course and Training Requirements for Brokers), unless the individual is exempted under §3.1723(c) of this title or has been associated with the license holder for less than two years.

(c) Change in license information. If there is a material change to any information provided in the application for license, the life settlement broker or provider must submit written notification of the change to the department not later than 30 days after the date such change occurs, using the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form. This requirement applies to material changes in information that occur after the license has been issued and during which time the license remains valid and unexpired.

(1) A life settlement broker or provider notifying the department of a change in information must provide the notice separately from any other submission of information to the department.

(2) Each life settlement broker and provider must keep the department informed of both the licensee's current mailing and physical addresses. The department will use the mailing and physical addresses on the most recent application or notification the life settlement broker or provider submitted to the department to communicate with and provide notices to the life settlement broker or provider.

(d) Additional licenses. If the department grants a licensee an additional life settlement broker or provider license, the expiration date of the license initially granted applies to all life settlement broker or provider licenses that the license holder subsequently obtains from the department.

(e) Effect of renewal application.

(1) Continuance of license until approved or refused. On filing the completed renewal application and payment of the proper fee, the life settlement broker's or provider's current unexpired license will continue in force until the department renews the license or makes a final determination to refuse to renew the license, as provided in Insurance Code §1111A.004 and Government Code §2001.054, and provides notice of such refusal in writing to the license holder.

(2) Expiration for not more than 90 calendar days. If the life settlement broker's or provider's license has been expired for not more than 90 calendar days, the life settlement broker or provider may apply to renew the license by sending a completed renewal application and fee, as applicable, and an additional fee equal to one-half of the required renewal fee.

(3) Expiration for more than 90 calendar days. If a life settlement broker or provider license has been expired for more than 90 calendar days, the life settlement broker or provider may not apply to renew the license. The life settlement broker or provider must obtain a new license by submitting a new application for a license and fee under §3.1721 of this title (relating to License Application; Fees).

(f) Surrender or nonrenewal of a provider's license. If a life settlement provider does not intend to renew or elects to surrender its license, the life settlement provider must request approval from the department by submitting the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form. The department must receive the provider's written request for nonrenewal or surrender at least 30 days before the date the provider's current license expires or planned surrender date. A life settlement provider must apply for license renewal and cannot surrender or nonrenew an expiring license if a life settlement contract is executed in the 15 days prior to the nonrenewal or surrender of the license. Prior to expiration or surrender, the life settlement provider must submit a report containing all the information required by §3.1760 of this title (relating to Reporting Requirements) for all life settlement contracts executed in Texas for which the insured is a resident of Texas.

(g) Effect of license surrender. The surrender of a life settlement broker's or provider's license to the department is not a defense to a violation of the Insurance Code or this title committed by the life settlement broker or provider prior to the effective date of the surrender. In addition, surrendering to the department any or all life settlement licenses in no way affects the authority of the department or the commissioner to initiate or continue any investigation or disciplinary proceedings concerning the life settlement broker or provider.

(h) Insolvency. If a court of competent jurisdiction assumes control of or appoints a receiver to control and wind down the business operations of a life settlement broker or provider, and the commissioner determines that such waiver is in the public interest and is consistent with the requirements of the Insurance Code, the department may waive requirements specified in this section.

§3.1723. Course and Training Requirements for Brokers.

(a) Individual continuing education requirement. A life settlement broker must complete at least 15 hours of department-certified life settlement continuing education during each two-year license period.

(b) Entity continuing education requirement. A partnership, corporation, or other entity must have each owner, partner, director, member, officer, and designated employee named in the license application or in any supplement to the application that perform the acts of a life settlement broker under Insurance Code §1111A.002(2), and is not exempt under subsection (c) of this section, complete at least 15 hours of department-certified life settlement continuing education during the two-year license period.

(c) Exempt persons. A life settlement broker is not subject to the requirements of this section if:

(1) the life settlement broker or the owner, partner, director, member, officer, or designated employee of the life settlement broker has been associated with the licensed entity for less than two years; or

(2) the life settlement broker holds a general life, accident, and health insurance agent license or acts solely as a life expectancy estimator. A general life, accident, and health insurance agent must continue to meet all applicable license and continuing education requirements for the general life, accident, and health insurance agent license.

(d) Continuing education subject requirements. The 15 hours of continuing education that a broker must complete during each two-year license period must include:

(1) at least six hours on the duties of life settlement brokers under Insurance Code Chapter 1111A, the requirements of this subchapter, and additional topics addressing statutes enacted and rules adopted subsequent to the effective date of this section, provided that the statutes or rules relate specifically to life settlement contracts;

(2) at least three hours on ethics and consumer protection; and

(3) at least six hours on life insurance.

(e) Credit for other licenses. Licensees may count a life settlement course toward completion of the non-ethics or consumer protection-related continuing education requirements prescribed in Insurance Code Chapter 4004, and §19.1003 of this title (relating to Licensee Requirements). If a licensee uses a life settlement course to satisfy a portion of the continuing education requirements prescribed in §19.1003 of this title, the licensee must comply with §19.1013 of this title (relating to Licensee Record Maintenance).

(f) Out-of-state continuing education. For license holders determining equivalent course hours, the licensee must maintain a list of all course approved times and states in which the course is approved and provide the list to the department on request. The equivalent hours are determined by using the average of approved times in other states.

(g) Proof of course completion. A licensee must maintain proof of completion of a life settlement continuing education course for a period of four years from the date of completion of the course. On request, the licensee must provide proof of completion of the life settlement continuing education course to the department. A licensee must immediately report to the department any discrepancy the licensee discovers between a course taken by the licensee and the credit hours certified to the licensee by the continuing education provider.

(h) Automatic fine. A broker's failure to comply with the provisions of this section is subject to automatic penalties of $50 per credit hour. Paying the automatic fine does not preclude other administrative action.

(i) Administrative action. The filing of a properly completed renewal application constitutes a licensee's certification that all required continuing education hours for the reporting period have been completed. The department's renewal of a license does not relieve a licensee or any individual from compliance with the continuing education requirements for any reporting period, and the failure to obtain required continuing education hours subjects the licensee to administrative action.

§3.1724. Continuing Education Providers.

(a) A continuing education provider for life settlement broker continuing education must comply with:

(1) §§19.1005, 19.1007, and 19.1008 of this title (relating to Provider Registration, Instructor, and Speaker Criteria; Course Certification Submission Applications, Course Expirations, and Resubmissions; and Certified Course Advertising, Modification, and Assignment, respectively);

(2) §19.1009 of this title (relating to Types of Courses);

(3) §19.1010 of this title (relating to Hours of Credit);

(4) §19.1011 of this title (relating to Requirements for Successful Completion of Continuing Education Courses); and

(5) §19.1014 of this title (relating to Provider Compliance Records).

(b) A life settlement broker continuing education provider that fails to comply with the requirements of this section is subject to:

(1) §19.1015 of this title (relating to Failure to Comply); and

(2) §19.1016 of this title (relating to Automatic Fines).

§3.1725. Life Insurance Agent Notification.

(a) Operating as a life settlement broker. A licensed life insurance agent may operate as a life settlement broker, provided that:

(1) the life insurance agent has held a license as a life insurance agent:

(A) in this state for at least one year; or

(B) in the person's home state for at least one year and is licensed as a nonresident agent in this state;

(2) notifies the commissioner, within 30 days after the first date of operating as a life settlement broker, by filing a completed Life Agent Notification to TDI to Act as a Life Settlement Broker form accompanied by the $50 fee; and

(3) has an active life insurance agent's license.

(b) Notice of renewal required. A life insurance agent that continues to operate as a life settlement broker must also submit a Life Agent Notification to TDI to Act as a Life Settlement Broker form on each subsequent renewal of the agent's life insurance agent license. No fee is required for subsequent renewal of life agent notifications.

(c) Temporary notification. A life insurance agent that has been operating under a temporary notification must submit a notification in accord with this section no later than 30 days after the effective date of this subchapter.

(d) Compliance required. A life insurance agent acting as a life settlement broker under Insurance Code Chapter 1111A must comply with all statutes and rules applicable to the business of life settlements.

(e) Sanctions. The commissioner may revoke the license of a life insurance agent or impose other sanctions in accord with Insurance Code Chapters 82, 83, and 84 for a violation of Chapter 1111A or this subchapter.

§3.1726. Life Expectancy Estimators.

(a) Insurance Code §§1111A.003(p), 1111A.012, and 1111A.014(l) and (m) do not apply to a life settlement broker who acts solely as a life expectancy estimator.

(b) A life settlement broker or life insurance agent who solely performs estimates of life expectancy must indicate on the License Application for a Life Settlement Provider or Broker form; the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form; or the Life Agent Notification to TDI to Act

as a Life Settlement Broker form, as applicable, that the broker or life insurance agent will act solely as a life expectancy estimator.

§3.1727. Unauthorized Insurance.

For purposes of Insurance Code §101.051(b)(8) and (9), unauthorized insurance includes participation of a life settlement broker or provider in connection with a life settlement contract for which the insured resides in this state but for which the owner is a trust or similar entity domiciled in another state and created primarily to avoid the requirements of Insurance Code Chapter 1111A.

§3.1728. Life Settlement Broker Fiduciary Duty.

Breach of a life settlement broker's fiduciary duty includes, but is not limited to:

(1) receiving compensation for negotiating a life settlement contract that would result in the owner receiving less than either the cash surrender value or accelerated death benefit of the life insurance policy payable at the time of application for a life settlement contract.

(2) a contractual agreement or arrangement to directly or indirectly exclusively negotiate life settlement contracts with a single life settlement provider.

§3.1729. Maintenance of Records.

A life settlement broker or provider must maintain a copy of the life settlement contract, verification of coverage, and any life expectancy estimate for each settled policy for five years from the date of execution of the contract.

§3.1730. Health Status Verification.

(a) Who can verify health status. Only a licensed life settlement broker, provider, or authorized representative of a licensed life settlement broker or provider may contact an insured to determine the insured's health status or to verify the insured's address.

(b) Written delegation. An authorized representative must have a written authorization from a licensed life settlement broker or provider to be an authorized representative. An authorized representative must agree in writing to adhere to the privacy provisions in Insurance Code Chapter 1111A.

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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Sara Waitt
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 463-6326

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DIVISION 3. FORM FILING AND USAGE REQUIREMENTS

28 TAC §§3.1740 - 3.1744

STATUTORY AUTHORITY. The new sections are proposed pursuant to Insurance Code Chapter 1111A and §36.001. Section 1111A.015 provides that the commissioner may adopt rules implementing Chapter 1111A and regulating the activities and relationships of providers, brokers, insurers, and their authorized representatives. Section 1111A.003 states that an application for a life settlement broker or provider license must be in a form prescribed by the commissioner and accompanied by a fee in an amount established by the commissioner by rule. Section 1111A.003(d) requires that a life insurance agent notify the commissioner on a form prescribed by the commissioner that the agent is acting as a broker and pay any applicable fee to be determined by the commissioner by rule. Section 1111A.005(a) states that a person may not use any form of life settlement contract in this state unless the form has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts. Section 1111A.025(b) states that the commissioner may exempt a broker who acts only as a life expectancy estimator from other provisions of this chapter if the commissioner finds that the application of those provisions to the broker is not necessary for the public welfare. Section 1111A.011(a) states that a licensed life settlement broker or provider must comply with all advertising and marketing laws under Chapter 541 and rules adopted by the commissioner that are applicable to life insurers or to license holders under this chapter. Section 1111A.003(l) provides that life settlement providers file with TDI not later than March 1 of each year an annual statement containing the information the commissioner prescribes by rule. Similarly, §1111A.006(a) states that each provider shall file with the commissioner no later than March 1 of each year an annual statement containing the information the commissioner prescribes by rule. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

§3.1740: Insurance Code §§1111A.002, 1111A.005, 1111A.011, 1111A.012, 1111A.014, and 1111A.015

§3.1741: Insurance Code §§1111A.002, 1111A.005, 1111A.012, 1111A.014, and 1111A.015

§3.1742: Insurance Code §1111A.012 and §1111A.015

§3.1743: Insurance Code §§1111A.002, 1111A.015, and 1111A.017

§3.1744: Insurance Code §§1111A.005, 1111A.011, and 1111A.015

§3.1740. Form Filing Requirements and Approval, Disapproval, or Withdrawal of Forms; Fees.

(a) General form filing requirement. A person must not use a form used to effect a life settlement in this state unless the form has been filed with and approved by the commissioner pursuant to this section, if prior approval is required by subsection (f) of this section.

(b) Required life settlement contract form filings. Forms that must be filed include the following:

(1) settlement contracts, including any amendments;

(2) disclosures;

(3) verification of coverage forms;

(4) escrow or trust agreements;

(5) documents used to obtain or release confidential information, including documents used by the life settlement broker

or provider that in any way refer to, affect, request, or relate to a life settlement broker or provider obtaining or releasing confidential information;

(6) owner consent forms;

(7) power of attorney forms;

(8) settlement applications;

(9) premium finance loan documents as specified in Insurance Code §1111A.002(11)(B), unless exempted by §1111A.002(11-A); and

(10) any other form used by a life settlement broker or provider to effect a life settlement contract in this state.

(c) Submission. Licensees must submit one copy of forms pursuant to this section. Non-electronic filings must be submitted to the Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701. A filing submitted electronically must be submitted through the System for Electronic Rate and Form Filing. A person must hold a life settlement broker's or provider's license issued by the department have authority to operate as a life settlement broker, or be authorized under subsection (d)(2) of this section to submit forms.

(d) Transmittal checklist requirement. The commissioner adopts by reference the Transmittal Checklist for Life/Health Rate and Form Filings to be filed with and attached to forms filed pursuant to subsection (c) of this section. The form may be obtained from the Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701, or by accessing the department's website at www.tdi.texas.gov/forms. The transmittal checklist must provide complete and accurate information about the filing, be signed by a duly authorized representative or attorney of the life settlement broker or provider, and include the following information:

(1) the name and license number of the submitting life settlement broker or provider;

(2) a designated contact person for the filing, including the individual's name, address, phone number, and, if available, fax number and email address. If the form filing is submitted by anyone other than the life settlement broker or provider, the filing must include an attachment executed by the life settlement broker or provider, or by an officer if an entity, that designates the person submitting the filing as the contact for that filing;

(3) a list of all submitted forms and an explanation of the purpose and use of each form;

(4) if applicable, a list of the form numbers and approval dates of all previously reviewed forms with which the submitted form will be used and a statement explaining when the submitted form will be used;

(5) a designation indicating the type of filing, as those types are described in subsection (h) of this section; and

(6) any applicable information, attachments, and certifications specified in this section.

(e) Specific form filing requirements. Forms filed pursuant to this section are subject to the requirements set forth in paragraphs (1) - (3) of this subsection.

(1) Any form filed pursuant to this section must:

(A) prominently display the full name, home office mailing address, and telephone number of the life settlement broker or provider;

(B) include specimen language and specimen fill-in material. A broker or provider is prohibited from including the confidential information of any policy owner in the filed form. Fill-in lines, blanks, and text boxes that are clearly titled with the information to be filled in do not require specimen language;

(C) be submitted on 8 1/2 by 11-inch paper or formatted for that size if submitted electronically. The department will not accept bound forms;

(D) be submitted in typewritten, computer-generated, or printer's proof format and be clearly legible;

(E) include a unique form number designation sufficient to distinguish it from all other forms used by the life settlement broker or provider. The form number must be located in the lower left-hand corner of the cover page or on the first page of the form, if visible with the cover closed; and

(F) a designation indicating whether the form is filed as file and use or review and approval prior to use as those categories are described in subsection (f) of this section.

(2) A form filed under this section may contain variable language, provided the variable language is both bracketed and accompanied by a clear explanation of how the material will vary and how it will be used.

(3) The department will not accept handwritten forms or handwritten corrections.

(f) Categories for form filings.

(1) Review and approval prior to use; deemer. A life settlement broker or provider must file life settlement contract forms, disclosures, and verification of coverage forms under this paragraph with the department not less than 60 days prior to the life settlement broker's or provider's use or delivery of such form. After the submission of a filing under this subsection, the life settlement broker or provider may not use or deliver the form on or before 60 days from the date the department receives the form unless the department approves the form during the 60-day period. If the department has not approved the form by the 60th day after the date the department receives the form, the life settlement broker or provider may deem the form approved only if:

(A) the life settlement broker or provider has not requested an extension or waiver of the review period; and

(B) the department has not disapproved the form.

(2) File and use. A life settlement broker or provider may immediately use and deliver a form filed under this category in this state until the department makes a request for corrections, or disapproves the form. A life settlement broker or provider may file any other form identified in subsection (b)(4) - (10) of this section under this paragraph. A filing under this category shall include the information and certifications specified in subsection (i)(1) and (2) of this section. Any form that the department has previously disapproved pursuant to subsection (k) of this section is not eligible for filing under this category.

(3) Forms approved prior to the effective date of this section. Forms approved prior to the effective date of this section must comply with this subchapter six months from the effective date of this section.

(g) Extension or waiver of review period. A request for extension of time for the approval of a form must comply with paragraphs (1) - (5) of this subsection.

(1) A life settlement broker or provider may request in writing an extension to the approval period for a form for an additional period not to exceed 45 days.

(2) The department automatically grants a timely request for extension under this section on the date it receives the request.

(3) The department will only grant one extension under this section.

(4) If the department grants an extension under this section and does not affirmatively approve or disapprove the form before the extended period expires, the form is considered approved on the first day after the date the extended period expires.

(5) A life settlement broker or provider may waive the deeming of the form filings.

(h) Types of form filings. The types of life settlement contract form filings available for designation on the transmittal checklist are as follows:

(1) New form. A form that the department has not previously reviewed or approved under Insurance Code §1111A.005 and this subchapter, except for a form withdrawn by a life settlement broker or provider pursuant to paragraph (6) of this subsection.

(2) Informational form. A form submitted for informational purposes only.

(3) Substantially similar to a previously approved form. A form that is substantially similar to a form that the department reviewed or approved on or after the effective date of this subchapter. This type of form filing requires the information and certification specified in subsection (i)(1), (2), and (4) of this section.

(4) Exact copy. A form that, except for the life settlement broker's or provider's name, address, phone number, or other similar life settlement broker's or provider's identification information, is an exact copy of a form the department reviewed or approved on or after the effective date of this subchapter. This type of form filing requires the information and certifications specified in subsection (i)(1) and (4) of this section and is approved as of the date the department receives it.

(5) Substitution for a previously approved form. A form that is a substitute for a form the department previously reviewed or approved on or after the effective date of this subchapter for the same life settlement broker or provider, provided that the broker or provider has not issued or otherwise used the previously reviewed or approved form in Texas and will not use it in Texas at any time. This type of form filing requires the information and certifications specified in subsection (i)(1) and (4) of this section.

(6) Correction to a pending form. A form containing corrections to a pending form submitted subsequent to the life settlement broker or provider receiving notification of the pending form's deficiencies from the department. This type of form filing requires the information and certifications specified in subsection (i)(1) and (5) of this section. The department must receive the filing no later than 30 days following the date the life settlement broker or provider receives written notification from the department of the form's deficiencies. The department will consider the originally submitted form withdrawn if it does not receive a corrected form within 30 days following the date the notification of the form's deficiencies is sent. The department will not approve or review a withdrawn form until the broker or provider refiles it as a new form filing.

(7) Resubmission of a previously disapproved form. A form containing corrections to a form subsequent to the life settlement broker or provider receiving a disapproval letter from the department. This type of form filing requires the information and certifications specified in subsection (i)(1) and (7) of this section.

(i) Certifications, Attachments, and Other Information. A life settlement broker or provider must include in a filing the certifications, attachments, and other information referred to in this section as follows:

(1) A life settlement broker or provider, or the broker's or provider's duly authorized representative or attorney, filing any form with the department must certify on the transmittal checklist that:

(A) the filer has reviewed and is familiar with all applicable statutes and regulations of this state;

(B) the filer has reviewed the form filing; and

(C) to the best of his or her knowledge and belief, the filed form complies in all respects with the applicable statutes and regulations of this state.

(2) A life settlement broker or provider filing a form as file and use under subsection (f)(2) of this section must, in addition to providing the certification specified in paragraph (1) of this subsection, certify that:

(A) no corrections to the form have been requested by the department; and

(B) the form has not been previously disapproved by the department.

(3) A life settlement broker or provider filing a form as review and approval prior to use under subsection (f)(1) of this section must, in addition to providing the certification specified in paragraph (1) of this subsection, certify that it will not use the form until the department approves it. If, following the 60th day from the date the department receives the form, the life settlement broker or provider elects to use, issue, or deliver such form prior to receiving approval from the department, the life settlement broker or provider must have provided the certifications specified in paragraphs (1) and (2) of this subsection.

(4) A life settlement broker or provider submitting a form under subsection (h)(3), (4), or (5) of this section must provide the certification specified in paragraph (1) of this subsection, in addition to the following information and certification:

(A) the form number and approval date of the previously approved form, including the broker's or provider's name if different from the submitting broker or provider;

(B) a summary of the differences between the previously approved form and the submitted form, including a description of any deleted text. The submitted form must clearly identify all changes, with new or modified text underlined; and

(C) a certification that the form contains no changes other than those identified.

(5) A life settlement broker or provider submitting a form pursuant to subsection (h)(6) of this section must provide the certification specified in paragraph (1) of this subsection, in addition to the following information and certification:

(A) the form number of the pending form;

(B) the name of the department's form review specialist who reviewed the form;

(C) the date of notification of any form deficiencies;

(D) the tracking number of the pending form assigned by the department;

(E) a summary of the differences between the previously reviewed form and the corrected form, including a description of any deleted text. The corrected form must clearly identify all changes, with new or modified text underlined; and

(F) a certification that the form contains no changes other than those identified.

(6) A life settlement broker or provider submitting a form pursuant to subsection (h)(5) of this section must provide the certification specified in paragraph (1) of this subsection and a certification that the broker or provider has not issued or used the original version of the form in Texas and will not use it in Texas at any time.

(7) A life settlement broker or provider submitting a form pursuant to subsection (h)(7) of this section must provide:

(A) a certification specified in paragraph (1) of this subsection, as well as the information and certifications specified in paragraph (5)(B), (D), (E), and (F) of this subsection;

(B) the form number of the disapproved form; and

(C) the date of disapproval by the department.

(j) Forms not qualified for review. The department will not accept for review and will return to the life settlement broker or provider form filings that are not accompanied by a completed transmittal checklist or that do not contain all required information or certifications. No filing fees will be refunded.

(k) Disapproval or withdrawal of previous approval; request for corrections. Form disapprovals, withdrawals of previous approvals, and requests for corrections to filed forms subject to paragraphs (1) and (2) of this subsection.

(1) The department may disapprove, withdraw previous approval, or request that a life settlement broker or provider make corrections of any form filed pursuant to this section if the form:

(A) fails to comply with any applicable statutes or regulations of this state;

(B) fails to meet any requirements of the Insurance Code, including §§1111A.011, 1111A.012, 1111A.014, and 1111A.023(b);

(C) is unreasonable or contrary to the interests of the public; or

(D) is otherwise misleading or unfair to the owner.

(2) When the department makes a request for corrections, disapproves a form, or withdraws approval of a form pursuant to this section, the department may require that the life settlement broker or provider discontinue using the form, replace the form, or any other appropriate remedy available by law.

(l) Notification of approval or disapproval. The department will provide written notification of any approval or disapproval of any form filed under this section.

(m) Additional requested information. The department may request any additional information necessary for a comprehensive review of any form in accord with the requirements in Insurance Code Chapter 1111A.

(n) Request for hearing. The life settlement broker or provider may make a written request for a hearing to the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas, 78701, on receiving notification under subsection (l) of this section of any withdrawal of approval or disapproval of a form by the department.

(o) Filing fees. Applicable fees for filings made pursuant to this division are set forth in paragraphs (1) - (4) of this subsection.

(1) For filing a complete life settlement contract, including forms related to the life settlement contract, a fee of $100.

(2) For filing life settlement contract forms individually, a fee of $100 for each filing.

(3) For filing a resubmission of a previously disapproved life settlement contract form, a fee of $50.

(4) For each refiling of a previously withdrawn life settlement contact form, a fee of $50.

§3.1741. Required Form Provisions.

(a) Life settlement contracts. All contracts used to effect life settlements must contain the provisions set forth in paragraphs (1) - (8) of this subsection, as follows:

(1) a provision that the life settlement contract must provide that the policy or the policy and application for the life settlement constitute the entire contract between the parties;

(2) a provision that any change to the life settlement contract is valid only on written execution of approval by an executive officer of the life settlement provider designated in the contract with authority to bind the provider and that such approval must be endorsed in or attached to the life settlement contract. The provision must also state that no person, other than an executive officer of the provider, has the authority to change the life settlement contract or to waive any of its provisions;

(3) a provision that, in the absence of fraud, all statements made by the owner and insured are representations and not warranties;

(4) a provision that the owner may designate any individual of legal age, in regular contact with the insured, as a contact for inquiries about the insured's health status on written notice providing the name, address, and telephone number of such individual. The provision must include a statement that the owner may change a designation at any time on written notice to the life settlement provider;

(5) a provision that the life settlement provider must provide to the insured the name, address, and telephone number of the life settlement broker, provider, or authorized representative of the provider or broker that will contact the insured or the insured's designee for tracking purposes and must notify the insured of any change in such information;

(6) a provision defining how any notice required or permitted under the contract must be given and delivered;

(7) a provision disclosing what effect the life settlement contract will have on payment of premiums and disposition of proceeds, cash values, and dividends; and

(8) a provision disclosing that, if the policy that is the subject of the life settlement contract is a joint policy, or contains riders or other provisions insuring the lives of a spouse, dependents, or anyone else other than the owner, there may be a possible loss of coverage, and that the owner should contact the owner's insurance company or agent to determine if the coverage may be converted to avoid losing the coverage.

(b) Prohibited provisions. A contract used to effect life settlement must not:

(1) contain an indemnification or a hold harmless provision that requires the owner or insured to protect another person against liability, loss, or damages that exceed the proceeds of the life settlement contract received by the owner; or

(2) require any owner to condition a life settlement contract on the exclusive dealing between the owner and the life settlement broker or provider.

(c) Retained ownership. If a life settlement provider enters into a life settlement contract that allows the owner to retain an interest in the policy, or if the policy contains a clause in the policy or attached to the policy by rider that provides an additional death benefit for accidental death, the life settlement contract or amendment must contain a provision that:

(1) the life settlement provider will transfer the amount of the net death benefit only to the extent or portion of the amount sold. The provision must also state that benefits in excess of the amount sold will be paid by the insurance company directly to the beneficiaries in accord with the terms of the policy;

(2) the additional death benefit for accidental death must remain payable to the beneficiary last named by the owner, not including the life settlement provider, or, in the absence of a beneficiary, to the estate of the owner;

(3) the life settlement provider will, on acknowledgment of the perfection of the transfer, either:

(A) advise the owner in writing that the insurance company has confirmed the owner's remaining interest in the policy; or

(B) provide the owner with a copy of the document prepared by the insurance company that acknowledges the owner's remaining interest in the policy; and

(4) defines the apportionment of premiums the life settlement provider and the owner will pay. The life settlement contract or amendment may specify that the life settlement provider will pay all premiums. The contract or amendment may also require the owner to reimburse the life settlement provider for the premiums attributable to the remaining interest, including any premiums for the accidental death benefit, subsequent to the life settlement contract.

(d) General contract requirements. All life settlement contracts, in addition to meeting the other requirements of this section, must contain:

(1) consistent terminology;

(2) a section defining key terms used in the life settlement contract;

(3) the name of the owner and insured;

(4) the number of the policy that serves as the basis for the life settlement contract;

(5) the name of the insurance company underwriting the policy at the time of contract;

(6) the amount of the net death benefit of the policy; and

(7) signature lines for the life settlement provider and the owner.

(e) Required disclosures. All life settlement contracts, in addition to meeting the other requirements of this section, must contain the written disclosures required by Insurance Code §1111A.012 and §1111A.014 for delivery to the owner by the life settlement broker, or provider if there is no broker involved in the transaction, with each application for a life settlement contract. For purposes of Insurance Code §1111A.012(a)(8), if the amount of compensation is not known at the time of application, the method of calculation must be provided at the time of application, and the amount of compensation must be provided at the date the life settlement contract is signed by the owner.

(f) Escrow and trust. A life settlement provider that places the proceeds of the life settlement contract into an escrow or trust account must comply with the following:

(1) the escrow agent may not be any person under common control with a life settlement broker or provider;

(2) the escrow or trust agreement must contain:

(A) the name of the owner;

(B) the number of the policy that serves as the basis for the life settlement contract;

(C) the name of the insurance company underwriting the policy at the time of contract execution;

(D) the name of the life settlement provider purchasing the policy;

(E) the name, address, and telephone number of the escrow agent or trustee;

(F) the amount of the owner's proceeds placed into the escrow or trust account;

(G) all terms and conditions of the escrow or trust agreement;

(H) the name and address of the financial institution holding the escrow funds into which the provider will pay the funds to the owner;

(I) a description of the purpose of the escrow or trust account;

(J) the circumstances that will trigger disbursement of the funds from the escrow or trust account;

(K) the limitations concerning, or time restrictions for, the insurance company's affirmative acceptance and acknowledgement of the assignment of the policy;

(L) if applicable, the process for required notices for communication if the owner rescinds the life settlement contract pursuant to Insurance Code §1111A.012(a)(5) or if the insurance company does not accept the policy assignment or transfer of ownership;

(M) the duties of the escrow agent or trustee;

(N) the designation of the escrow agent or trustee;

(O) the limits of liability for the escrow agent or trustee;

(P) the process for resolving any dispute arising between the owner and the life settlement provider, the escrow agent, or the trustee concerning the interpretation of the escrow or trust agreement; and

(Q) a signature line for the life settlement provider, the owner, and the escrow agent or trustee.

(g) Medical release. A medical release form must:

(1) be in writing and signed by the insured; and

(2) disclose the medical records covered by the release; the purposes for the release; the identity of the person to whom the information is to be released; any limitations on the right to withdraw consent; and that the release form may be used to determine and track the insured's ongoing health status.

(h) Policy release. A policy release form must:

(1) be in writing and signed by the owner; and

(2) disclose the information covered by the release, the purposes of the release, the identity of the person to whom the information is to be released, and the owner's right to withdraw consent.

(i) Power of attorney. A power of attorney form must be limited to the purpose of releasing medical information in connection with the settlement transaction, including tracking the ongoing health status of the insured.

(j) Verification of coverage. A verification request form must be limited to information relevant to the life settlement contract.

(k) Premium finance loan. A life settlement broker or provider may not use a premium finance loan that is not already filed with and approved by the department under Insurance Code Chapter 651. The department may disapprove a premium finance loan form approved under Insurance Code Chapter 651 for use with or as a life settlement contract if it violates Insurance Code Chapter 1111A.

(l) Owner's copies. The life settlement broker or provider must provide the owner with a copy of the life settlement contract and all materials used to effect the life settlement contract, including the application, a copy of the escrow or trust agreement, and any consent forms or any other document that the life settlement broker or provider required the owner or the owner's representative to sign to effect the life settlement contract. The life settlement contract and all other materials used to effect the life settlement contract must be provided at no charge to the owner.

§3.1742. Shopper's Guide.

The commissioner adopts by reference the form Important Information You Should Know Before Entering Into A Life Settlement, as a shopper's guide for delivery to owners during the solicitation process. The life settlement broker, or the provider if the transaction does not have a broker, must deliver the guide to the owner prior to the execution of the life settlement contract. The form is available from the Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701, or by accessing the department's website at www.tdi.texas.gov/forms. The delivery of the shopper's guide satisfies only the requirements of Insurance Code §1111A.012(10), and this section.

§3.1743. Prohibited Life Settlements.

A life settlement provider may not offer an owner a life settlement contract with a minimum value that is less than the cash surrender value or accelerated death benefit of the life insurance policy payable at the time of application for a life settlement contract.

§3.1744. Advertising, Sales, and Solicitation Materials; Filing Prior to Use.

(a) Filing requirement. Each life settlement broker or provider must file with the department any advertisement or other solicitation materials used to market life settlement contracts or broker's or provider's services in this state on or before the date such materials are disseminated. Advertising filings should be filed with the department at the address specified in §21.120 of this title (relating to Filing for Review).

(b) Information filing. The filings required by this section are for informational purposes only. Life settlement brokers or providers may use or disseminate the materials referenced in this section without prior review by the department.

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 December 11, 2012.

TRD-201206368
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 463-6326

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DIVISION 4. ANNUAL REPORTING

28 TAC §3.1760

STATUTORY AUTHORITY. The new section is proposed pursuant to Insurance Code Chapter 1111A and §36.001. Section 1111A.015 provides that the commissioner may adopt rules implementing Chapter 1111A and regulating the activities and relationships of providers, brokers, insurers, and their authorized representatives. Section 1111A.003 states that an application for a life settlement broker or provider license must be in a form prescribed by the commissioner and accompanied by a fee in an amount established by the commissioner by rule. Section 1111A.003(d) requires that a life insurance agent notify the commissioner on a form prescribed by the commissioner that the agent is acting as a broker and pay any applicable fee to be determined by the commissioner by rule. Section 1111A.005(a) states that a person may not use any form of life settlement contract in this state unless the form has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts. Section 1111A.025(b) states that the commissioner may exempt a broker who acts only as a life expectancy estimator from other provisions of this chapter if the commissioner finds that the application of those provisions to the broker is not necessary for the public welfare. Section 1111A.011(a) states that a licensed life settlement broker or provider must comply with all advertising and marketing laws under Chapter 541 and rules adopted by the commissioner that are applicable to life insurers or to license holders under this chapter. Section 1111A.003(l) provides that life settlement providers file with TDI not later than March 1 of each year an annual statement containing the information the commissioner prescribes by rule. Similarly, §1111A.006(a) states that each provider shall file with the commissioner no later than March 1 of each year an annual statement containing the information the commissioner prescribes by rule. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

§3.1760: Insurance Code §1111A.006 and §1111A.015

§3.1760. Reporting Requirements.

(a) General reporting requirements applicable to all life settlement providers. All life settlement providers must comply with the

general reporting requirements set forth in paragraphs (1) and (2) of this subsection.

(1) On or after January 1 and before March 1 of each year, each life settlement provider must submit electronically via email in Excel format to lifehealth@tdi.state.tx.us, for the previous calendar year, the life settlement provider data report form that is adopted by reference in this section, whether or not the provider conducted any transactions during the reporting period.

(2) In complying with the requirements of this section, a life settlement provider may not include any confidential information in the report or in any other way compromise the anonymity of any owner, owner's family members, or owner's spouse.

(b) Report requirements. The commissioner adopts by reference the Life Settlement Provider Data Report form, to be filed pursuant to subsection (a) of this section. The form is available from the Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701, or by accessing the department's website at www.tdi.texas.gov. The report must include the following:

(1) the name and license number of the submitting life settlement provider;

(2) a designated contact person for the report, including the individual's name, address, phone number, and if available, fax number and email address; and

(3) with respect to life settlement contracts executed in Texas for which the insured is a resident of Texas during the reporting period for a policy settled not later than the fifth anniversary of the issue date of policy, as follows:

(A) the total number of life settlement contracts entered into during the immediately preceding calendar year, with the information categorized by policy issue year;

(B) the aggregate face amount of the policies settled during the immediately preceding calendar year, with the information categorized by policy issue year;

(C) the proceeds of life settlement contracts entered into during the immediately preceding calendar year, with the information categorized by policy issue year for policies issued in each of the last five years;

(D) the full name of each insurance company whose policies have been settled and the brokers that have settled the policies; and

(E) the name and life settlement broker license number of any persons who estimated life expectancies for a life settlement contract.

(c) Disciplinary action. A life settlement provider that fails or refuses to submit any information required by this section is subject to disciplinary action under Insurance Code §1111A.006 in addition to any other applicable penalty.

(d) 2011 data. Notwithstanding the requirements of subsection (a) of this section, each life settlement provider must submit a report with the information required in this section within 60 days from the effective date of this rule for data regarding life settlement contracts entered during the period of January 1, 2011, to December 31, 2011, in Texas for which the insured is a resident of Texas. A life settlement provider that has already provided complete information required in subsection (b)(3)(A) - (E) of this section by the effective date of this section meets the requirements of this subsection.

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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Sara Waitt
General Counsel
Texas Department of Insurance
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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER B. INSURANCE HOLDING COMPANY SYSTEMS

28 TAC §§7.201 - 7.205, 7.209 - 7.214

INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 TAC §§7.201 - 7.205, 7.209 and 7.210 and new §§7.211 - 7.214, concerning insurance holding company systems. These amendments and new sections are necessary to implement statutory changes from Senate Bills 1283 and 1284 (79th Leg., 2005), 1542 (80th Leg., 2007), and 1431 (82nd Leg., 2011) and adopt National Association of Insurance Commissioners (NAIC) model regulations, as applicable. Insurance companies and health maintenance organizations (HMOs) are subject to the Texas Insurance Holding Company Systems Act, which is codified in the Insurance Code Chapter 823 (Act). The proposed amendments and new sections update the law relating to the functions of insurance holding company systems in response to lessons learned as a result of the nation's recent financial crisis.

Legislative intent from enrolled bill analysis to Senate Bill 1431 provides that the updated NAIC model act and regulation address the needs of insurance regulators to be able to assess the enterprise risk within a holding company system and its potential impact on the solvency of an insurer within the holding company system. Insurance companies and HMOs are required to provide TDI with reports on enterprise or system risks posed by non-insurance operations that may spread to an insurance company and potentially harm its financial condition. These changes provide transparency in holding company system operations while building on the existing firewalls that provide insurance company solvency protection. As a result, the department will have the regulatory tools needed to evaluate contagion risk that may develop within an insurance holding company system, which impacts the department's ability to protect the interests of the public and the state generally. The proposed sections provide the commissioner with enhanced access to information about the financial condition of insurance holding company systems and enhanced examination authority.

The proposal contains non-substantive changes in the text to correct punctuation and grammar and conform to current agency writing style. In addition, the proposal contains updated citations due to re-codification of the Insurance Code, current agency address, renumbering due to proposed amendments, recitation of proposed section form numbers and names, and other con-

forming changes. Generally, the proposal incorporates statutory changes relating to form filings, definitions, registration of insurers, transactions subject to prior notice, acquisition or divestiture statements-filing requirements, and Forms A - F. The majority of statutory changes in the proposal are from Senate Bill 1431. It is noted when proposed amendments are from Senate Bills 1283, 1284, and 1542.

An informal draft of this proposal was posted on the TDI website from September 13, 2012, to September 21, 2012. Subsequent changes were made to the draft, including the deletion of proposed §7.206, and are reflected in this proposal. Specifically, substantive changes to §7.201 include proposed amendments to form filings. Section 7.201(a)(1) adopts by reference the latest version of the NAIC biographical affidavit form which is available on the TDI website. In §7.201(a)(2), the term "Financial Analysis" is replaced with "Cashier's Office" and "a copy of the letter transmitting the statement, notice, or application" is replaced with "the Fee Transmittal Form on the department website" to clarify where to file and which form to attach with the fee.

Section 7.202 includes proposed amendments to definitions. "Divesting person," "Divestiture," and "Enterprise Risk" are added to §7.202(a)(10) - (12), respectively, and are identical to the Insurance Code §823.002 to highlight the added concepts of divestiture and enterprise risk. Section 7.202(a)(15) tracks language from the Insurance Code §823.002(6), regarding the definition of Insurer, to clarify that the holding company definition no longer includes any agency, authority, or instrumentality of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state. Section 7.202(a)(18) of the rules defining Insurer includes HMOs as provided in the Insurance Code §843.051(f) from Senate Bill 1284 (79th Leg., 2005).

Section 7.203(a) removes an exemption from the Act for an insurance holding company system where each affiliate in the system is privately owned by not more than five security holders, each of whom is an individual, as found in the Insurance Code §823.015 from Senate Bill 1283 (79th Leg., 2005). Section 7.203(e)(1) - (12) regarding amendments to registration statements are deleted to simplify the subsection. Section 7.203(e) deletes formal approval by official order to clarify that any transaction that is approved by the commissioner is deemed to be an amendment to the registration statement without further action or filing. Section 7.203(g) deletes the requirement that a registrant must file a restated up-to-date registration statement within 120 days of the end of each calendar year ending in a five or a zero and adds that an insurer must file an annual registration statement as provided in the Insurance Code §823.055(b) from Senate Bill 1542 (80th Leg., 2007). In addition, §7.203(g) includes a provision that an insurer required to file an annual registration statement must also furnish a summary of material changes from the prior year's annual registration statement as found in proposed new §7.211 (Form C) pursuant to the Insurance Code §823.055(c) from Senate Bill 1542 (80th Leg., 2007) even if there are no changes. A filing fee remains required for Form B. Section 7.203(k) adds pursuant to Insurance Code §823.0595 that the ultimate controlling person of an insurer is required to file an enterprise risk report on proposed Form F.

An amendment to §7.203(m) adds requirements regarding disclaimers of control of affiliation pursuant to the Insurance Code §823.010 in narrative format to be consistent with the NAIC. These requirements were previously located in §7.211 (Form C), which is proposed for repeal in this issue of the *Texas Register.* Section 7.203(m)(4) adds that the applicant of a disclaimer which has been allowed must notify the commissioner within 15 days after the end of the month if any information constituting the basis for the disclaimer is incomplete, inaccurate, or no longer accurate. The commissioner may disallow the disclaimer for failure to provide the information. Section 7.203(m)(5) deletes the provision that unless disallowed by the commissioner, a disclaimer filed under this subsection relieves a person of the duty to comply with certain requirements of the Act as provided in the Insurance Code §823.010(f). Section 7.203(m)(5) retains the provision that after a disclaimer has been filed, the insurer is relieved of the duty to register or report under subsection (a) of this section unless and until the commissioner disallows the disclaimer. In addition, §7.203(m)(5) deletes the requirement that the commissioner must furnish all parties in interest with notice and opportunity to be heard prior to disallowing a disclaimer and adds pursuant to the Insurance Code §823.010(e) that if the commissioner disallows a disclaimer, the party who filed the disclaimer may request an administrative hearing which must be granted by the commissioner. Section 7.203(n) adds failure to file a registration statement or any amendment to a Form B (registration statement), or to proposed Form F (enterprise risk report) pursuant to the Insurance Code §823.060, is a violation of this subchapter.

An amendment to §7.204 changes the title from "Commissioner's Approval Required" to "Transactions Subject to Prior Notice" to be consistent with NAIC regulations, and to capture and distinguish the threshold for large transactions versus specific transactions. Section 7.204(a)(1) regards large transactions and adds existing statutory language from the Insurance Code §823.102(a) that this section applies only to sales, purchases, exchanges, loans or extensions of credit, or investments including an amendment or modification of an affiliate agreement previously filed under this section, that involve more than the lesser of five percent of the insurer's admitted assets or 25 percent of the insurer's surplus, as of December 31 of the year preceding the year in which the transaction occurs. Section 7.204(a)(2) regards specific transactions, including sales, purchases, exchanges, loans or extensions of credit, or investments, and adds reinsurance agreements, including pooling agreements, and the requirement that these transactions are applicable to amendments or modifications of affiliate agreements as previously filed pursuant to the Insurance Code §823.103. The non-statutory addition of the term guarantee to the rule is included as an extension of credit and corresponds to NAIC language in proposed Form D. Section 7.204(a)(2)(D) relates to §7.212 (proposed Form D) and contains the minimum information required for management or service, cost sharing, and rental or leasing agreements to the extent consistent with applicable law or regulation, and as applicable.

Section 7.205 adds the concept of divestiture to the acquisition statements - filing requirements pursuant to the Insurance Code §823.154 and §823.157. Language in §7.205(a) stating that an acquisition of control of a domestic insurer is subject to the Act, §5, regardless of the domestic insurer's exemption from regulation under the Act, §2(r), is deleted pursuant to Senate Bill 1283 (79th Leg., 2005). The proposed rule continues to require a domestic insurer to file acquisition statements and the language in the rule denying the exemption is no longer needed. Proposed §7.205(h) deletes the requirement to file a rarely used exemption form as found in proposed for repeal §7.213 (Form E) which is published in this issue of the *Texas Register.*

Proposed amendments to §7.209 (Form A), statement regarding the acquisition, change of control, or divestiture of a domestic insurer, add language to be consistent with NAIC regulations. Subsections 7.209(d)(1) and (f)(4) add that biographical data be in the form of the latest version of the biographical affidavit form published by the NAIC and adopted by reference in §7.201(a)(1) of this title, which are available on the department website. Section 7.209(e) adds NAIC language regarding the nature, source, and amount of funds or other consideration and moves the consideration language from §7.209(e)(3) to proposed subsection (e)(1). Section 7.209(g) adds a statement of the method by which the fairness of the proposal was determined. Section 7.209(i) adds that the description must identify the persons with whom the contacts, arrangements, or understandings have been made. Section 7.209(m) is not a statutory amendment, but adds the requirement that financial projections of the insurer and the applicant must be attached as an appendix. The time frame for the projections moves from §7.209(m)(3) to proposed §7.209(m)(1) for clarification. Section 7.209(m)(3) was added to adopt NAIC formatting with smaller paragraphs. Section 7.209(m)(5) adds the word "divestiture" to Form A. Section 7.209(n) adds the concept and requirement that, as applicable, applicant agrees to provide enterprise risk management information required by proposed new §7.214 (Form F) pursuant to Insurance Code §823.0595 within 15 days after the end of the month in which the acquisition of control occurs as required by Insurance Code §823.201(d). The intent is to preserve the exemption in Insurance Code §823.0595(g) and comply with the phase in components of the statute. Section 7.209(o) adds the concept of filing notice regarding divestiture of control pursuant to Insurance Code §823.154.

Section 7.210 (Form B) amends the registration statement. Section 7.210(e) replaces former biographical data requirements with NAIC language; no affidavit is required. Section 7.210(f)(1)(O) adds an internal control inquiry in accord with Insurance Code §823.052(b)(12). Proposed §7.210(h) and (i) follow the NAIC language and retain the Form B content. Section 7.210(i)(2) includes affiliates pursuant to Insurance Code §823.052(c)(1). In addition, §7.210(i)(2) adds that the filing is of the end of the person's latest fiscal year or any other period as determined by the commissioner. Section 7.210(i)(5) and (6) permit commissioner discretion with regard to the standard and type of financial statement to be filed by the ultimate controlling person whether or not the ultimate controlling person is an individual. Proposed §7.210(j) deletes the requirement for a copy of the charter or articles of incorporation and bylaws pursuant to the Insurance Code §823.052 from Senate Bill 1542 (80th Leg., 2007), and adds that an insurer required to file an annual registration statement will also furnish a summary of material changes to the registration statement (proposed Form C) pursuant to the Insurance Code §823.055(c) from Senate Bill 1542 (80th Leg., 2007). A Form C is not required to be filed if a Form B amendment is filed in the interim.

Proposed new §7.211 (Form C), summary of material changes to registration statement, adds NAIC model regulations and provides that an insurer required to file an annual registration statement will also furnish a summary of material changes to the registration statement pursuant to the Insurance Code §823.055(c) from Senate Bill 1542 (80th Leg., 2007). The proposed text differs from the NAIC model regulations, to the extent that, under §7.203(e) and (g), only material changes need to be filed as amendments pursuant to the Insurance Code §§823.053 - 823.055. Section 7.211 (Form C) relating to disclaimers of control or affiliation is proposed for repeal and the requirements regarding disclaimers of control or affiliation pursuant to Insurance Code §823.010 are added to §7.203(m). Proposed Form C must be filed annually with the Form B even if there are no changes to be reported. Form C does not require a separate filing fee from Form B.

Proposed new §7.212 (Form D), prior notice of a transaction, adds the NAIC model regulation language while proposal for repeal of existing Form D for extraordinary dividends is published in this issue of the *Texas Register.* Section 7.212(b) includes a requirement to identify the parties and furnish information for each of the parties to the transaction. Section 7.212(c) requires a description of the transaction and differs from the NAIC regulations in §7.212(c)(1) since there is no reference to the NAIC model laws. Section 7.212(c)(2), (3) and (5) differ from the NAIC regulations to include transaction requirements from §7.204(b). Section 7.212(d) regards sales, purchases, exchanges, loans, extensions of credit, guarantees, or investments. Proposed §7.212(e) regards loans or extensions of credit to a non-affiliate and does not include NAIC language to avoid conflict with the Act regarding notice parameters. Section 7.212(f) regards reinsurance and §7.212(g) regards management, service, and cost sharing agreements.

Proposed new §7.213 (Form E), notice of ordinary and extraordinary dividends and other distributions, replaces existing §7.213, regarding exemptions, which is proposed for repeal in this issue of the *Texas Register.* Section 7.213 consolidates ordinary and extraordinary dividend and distribution from Form D, regarding extraordinary dividends, and content from the HC-Dividend form, regarding ordinary dividends which is currently on the department website. Section 7.213(b) adds the ordinary dividend content and §7.213(c) contains extraordinary dividend information. Section 7.213(b)(4)(B) is a bridge calculation to determine if information relating to extraordinary dividend and distribution are required. Although proposed §7.213(b)(5) regarding earned surplus applies to HMOs pursuant to the Insurance Code §843.051(f), the department will discontinue use of the earned surplus form and the distinction between earned surplus and adequacy of surplus for purposes of the Insurance Code Chapter 823 regarding dividends no longer remains. Section 7.213(b)(9) adds a certification that the declaration or payment of the dividend or distribution does not violate certain provisions of the Insurance Code, as applicable.

Proposed new §7.214 (Form F) is an addition to the regulations and contains enterprise risk report information required by the Insurance Code §823.0595 and follows the NAIC language. The Insurance Code §823.0595 includes a statutory notice requirement in accord with Acts 2011, 82nd Leg., ch. 922 (S.B. 1431), §18 that, subject to the §823.0595(b) phase-in requirements, the department may not implement this section until the 180th day after the date the commissioner has determined that the NAIC has completed an enterprise risk form and has proposed a master confidentiality agreement and places notice of that determination in the *Texas Register.* The notice is found in proposed §7.214(e).

In conjunction with these proposed amendments and new sections, the proposed repeal of §§7.211 - 7.213 is also published in this issue of the *Texas Register.*

FISCAL NOTE. Danny Saenz, deputy commissioner, Financial Regulation Division, has determined that for each year of the first five years the proposed amendments and new sections will be in effect, there will be no fiscal impact to state and local gov-

ernments 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. Saenz has also determined that for each year of the first five years the proposed amendments and new sections are in effect, there are several public benefits anticipated because of the enforcement and administration of the proposal, as well as potential costs for persons required to comply with the proposal.

ANTICIPATED PUBLIC BENEFITS

The public benefit anticipated as a result of the proposal include: (i) updating existing rules regulating holding company systems to implement statutory changes enacted by the 79th, 80th, and 82nd Legislatures; and (ii) adopting the NAIC model rules, where applicable, to provide enhanced holding company system reporting, more effective regulation to protect consumers, and closer alignment of Texas holding company requirements with those of other states. These proposals are expected to facilitate standardization of compliance and create cost efficiencies to regulated companies; enhance effective regulation of holding company systems as forms and requirements for acquisition and divestiture, registration, summary of material changes, prior notice of a transaction, dividend and distribution, and disclaimers will create further standardization and transparency; and establish the enterprise risk report form which will allow for uniform reporting and assessment of critical risks among complex entities in a holding company system to protect Texas insurance consumers and the public.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL

The cost to persons required to comply with the proposal during each year of the first five years that the rules will be in effect are nominal, because the proposed requirements are routine, include information that is expected to be readily available by the applicant, and are driven by statute. Some additional costs may be incurred by larger companies that have a greater exposure in the market.

Statutory changes to the Insurance Code §823.154 and §823.157, added the requirement that notice of divestitures, in addition to acquisitions, be filed with TDI. Although notice of divestitures was not required previously, the notice will only be required in situations where an acquisition subject to filing does not exist. It is anticipated that there will be no more than one divestiture filing from the industry in the next five years and the filing on proposed Form A, §7.209, creates nominal administrative costs for a company filing divestiture information.

The Insurance Code §823.055 was changed to require registration from filing every five years to annual filing with a summary of material changes from the prior year. Proposed §7.203 and §7.210 (proposed Form B) will require companies to file an annual registration statement with the commissioner each year over the next five years. However, companies will not incur additional administrative costs as companies have been making annual filings since the statute took effect in 2007. The Insurance Code §823.052 provides that the annual filing will require disclosures of corporate governance and internal control responsibilities of the insurer's board of directors. The information in the filing is readily available and may create nominal professional staff costs in each year of the first five years. The summary of material changes is new as proposed in Form C, §7.211, which incorporates the NAIC model form. The requirement to notify TDI of material changes is currently accomplished through the filing of transactions throughout the year; however, the changes will now be summarized in Form C. The filing on a specified form will create nominal administrative costs each year of the first five years which is to some extent being offset by the requirement eliminated in the Insurance Code §823.052 for filing the charter, by-laws and articles of incorporation, which has been in effect since 2005.

Form D, prior notice of a transaction, is proposed in §7.212 to incorporate the NAIC model form and is required pursuant to the Insurance Code §§823.101, 823.102, and 823.103, to describe certain elements of the transaction and business impacts for which information is expected to already exist. In practice, companies are required to provide the overview of transactions to TDI in a filing; the description of the transaction will now be summarized in Form D. The filing will create nominal administrative costs for companies filing transactions.

There will be no additional costs associated with §7.213, proposed Form E, each year over the next five years, because filing dividend and distribution information is already required. Currently, companies file separate forms for ordinary and extraordinary dividend and distribution. The proposed rule consolidates filing ordinary and extraordinary dividend information into one form.

The Insurance Code §823.0595 includes that companies, writing direct or assumed annual premium of $300 million or more (phased in from 2014 to 2016), which are required to register with the commissioner, must file an enterprise risk report as proposed in §7.203(k) on proposed Form F, §7.214. Form F is proposed in accordance with the NAIC model rule. The report provides a description of the material risks within the insurance holding company system that may pose enterprise risks to the insurer. Companies required to file the enterprise risk report are expected to be operating prudently and have in place current enterprise risk management based on best practices for corporate governance. Administrative and professional staff costs associated with compiling and filing the enterprise risk report on the basis of existing enterprise risk management will vary depending on the complexities of a holding company system as well as the size of the company based on the direct or assumed annual premium range written by the insurer. Costs are anticipated to range from $16,000 to $19,000 for companies with annual direct or assumed premium writings of $5 billion or more; from $14,000 to $16,000 for companies with annual direct or assumed premium writings greater than $1 billion but less than $5 billion; from $11,000 to $13,000 for companies with annual direct or assumed premium writings greater than $500 million but less than $1 billion; and from $8,000 to $9,000 for companies with annual direct or assumed premium writings of $300 million to $500 million. Costs will be reduced to the extent that a company may submit information as filed with the Securities and Exchange Commission as long as it is responsive to the information required in proposed Form F.

The Insurance Code §823.201 includes a requirement that an enterprise risk report pursuant to §823.0595 be filed upon an acquisition of control of companies that must register with the commissioner. Proposed §7.209, Form A, provides that the information required by proposed new Form F be filed within 15 days after the end of the month in which the acquisition of control occurs. Administrative and professional staff costs associated with the enterprise risk report filed upon a change of control are anticipated to range from $12,000 to $19,000 depending on the complexities of the holding company system.

TDI has determined that the associated costs for implementing the statutory changes and adopting NAIC model regulations, as applicable, will not have an adverse effect on small and micro businesses, and the cost for compliance will vary only for large businesses with regard to the enterprise risk report as outlined in this cost note.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accord with the Government Code §2006.002(c), TDI has determined that these proposed amendments and new sections will not have an adverse economic effect on small or micro businesses. The costs for compliance will only vary between the smallest and largest businesses, because of the additional expense to larger companies due to filing the enterprise risk report on proposed Form F.

Although the department has determined that the proposed amendments and new sections will not have an adverse effect on small and micro businesses, the department has considered the purpose of the applicable statutes, which is to implement statutory changes, adopt the NAIC model rules, as applicable, and provide enhanced reporting, evaluation, and regulation of solvency and risk that may develop within an insurance holding company system to protect the public, and has determined that it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses. Additionally, it is the department's position that to waive or modify the requirements of the proposed amendments and new sections for small and micro businesses would result in a disparate effect on policyholders and other persons affected by the amendments.

The proposed amendments and new sections include provisions for certain reporting requirements that are provided to implement statutory changes and to adopt NAIC model regulations. These amended requirements are routine and include information that is expected to be readily available by the applicant.

Proposed §7.202 adds that HMOs are subject to the Act; however, HMOs have been subject to the Act since the Insurance Code §843.051(f) took effect in 2005. Current Form C, with regard to a filing requirement for disclaimers, is proposed for repeal, and the content along with statutory changes is relocated to proposed §7.203. Proposed Form C, §7.211, for the summary of material changes to the registration statement contain information that is readily available and already being filed. Proposed §7.203 and §7.210 (Form B) add a requirement for internal control disclosure to the registration statement; however, this information is expected to be readily available and will require only routine reporting. Proposed §7.203 and §7.209 (Form A) add a requirement for filing an enterprise risk report, proposed Form F; however, this requirement is applicable only to large companies. Proposed §7.204 adds requirements for terms to be included in agreements for prior notice filed in accordance with proposed §7.212 (Form D), which already are applied in practice. Proposed §7.212 (Form D) requires a transaction being filed to include certain summary information which is readily available and will require routine reporting. Proposed §7.213 (Form E) consolidates Form D and the HCDividend form on the TDI website for ease of filing. In accord with the Government Code §2006.002(c), TDI is not required to prepare an economic impact statement or 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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on January 28, 2013, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Angel Garrett, Assistant Chief Analyst, Financial Analysis, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the adoption of the proposed amendments and new sections in a public hearing under Docket No. 2750 scheduled for January 24, 2013, at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Written and oral comments presented at the hearing will be considered. The notice to consider the adoption of the proposed repeal is published in this issue of the *Texas Register.*

STATUTORY AUTHORITY. The amendments and new sections are proposed pursuant to the Insurance Code §§823.012(a), 823.052(b), 823.052(c)(13), 823.054(d), 823.055(c), 823.059(c), 823.101(b-1), 823.103(a)(4), 823.154(a)(3), 36.001, and 36.004. Section 823.012(a) provides that the commissioner may, after notice and opportunity for all interested persons to be heard, adopt rules and issue orders to implement this chapter, including the conducting of business and proceedings under this chapter. Section 823.052(b) provides that the registration statement must be in a format prescribed by the National Association of Insurance Commissioners or adopted by rule of the commissioner and contain current information relating to the registration statement. Section 823.052(c)(13) provides that the registration statement must also contain information about any other information that the commissioner requires by rule. Section 823.054(d) provides that the commissioner by rule or order may provide a standard that is different from the standard provided by subsection (b). Section 823.055(c) provides that an insurer required to file an annual registration statement shall also furnish a summary of material changes from the prior year's annual registration statement as specified by the commissioner by rule. Section 823.059(c) provides that the commissioner by rule or order may exempt an insurer, information, or a transaction from the application of this subchapter. Section 823.101(b-1) provides that an agreement, including an agreement for cost-sharing, services, or management, must include all provisions required by rule of the commissioner. Section 823.103(a)(4) applies only to any material transaction between a domestic insurer and any person in the insurer's holding company system that is specified by rule and that the commissioner determines may adversely affect the interests of the insurer's policyholders or of the public, including an amendment or modification of an agreement previously filed under this section. Section 823.154(a)(3) provides that if the person is initiating a divestiture of control, the divesting person shall file with the commissioner a notice of divestiture on a form adopted by the National Association of Insurance Commissioners or adopted by the commissioner by rule. Section 843.051(g) provides that the commissioner may adopt rules as necessary to implement this subsection in a way that reflects the nature of health maintenance organizations, health care plans, or evidences of coverage. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary

and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state. Section 36.004 provides that except as provided by §36.005, the department may not require an insurer to comply with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners, including a rule, regulation, directive, or standard relating to policy reserves, unless application of the rule, regulation, directive, or standard is expressly authorized by statute and approved by the commissioner.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

§7.201 - Insurance Code §§403.001, 823.012, 823.052, 823.055, 823.0595, 823.101, 823.102, 823.103, 823.107, 823.154, and 823.157

§7.202 - Insurance Code §§823.002, 823.015, and 843.051

§7.203 - Insurance Code §§823.002, 823.010, 823.015, 823.052, 823.055, 823.0595, and 823.060

§7.204 - Insurance Code §§823.101, 823.102, and 823.103

§7.205 - Insurance Code §§823.002, 823.154, 823.157, 823.164, and 823.201

§7.209 (Form A) - Insurance Code §§823.002, 823.015, 823.154, 823.157, and 823.201

§7.210 (Form B) - Insurance Code §§823.002, 823.015, 823.052, 823.055, 823.0595, and 823.060

§7.211 (Form C) - Insurance Code §823.055, and §823.060

§7.212 (Form D) - Insurance Code §§823.101, 823.102, and 823.103

§7.213 (Form E) - Insurance Code §§403.001, 403.051, 403.052, 403.053, 823.008, 823.012, 823.053, 823.107, and 843.051

§7.214 (Form F) - Insurance Code §§823.002, 823.059, and 823.060

§7.201. Forms Filings.

(a) General requirements.

(1) The forms [~~that are~~] specified in §§7.209 - 7.214 [~~§§7.209 - 7.213~~] of this title (relating to Form A, Form B, Form C, Form D, [~~and~~] Form E, and Form F, respectively) are [~~intended to be~~] guides for preparing [~~in the preparation of~~] the statements, notices, and applications required by the Insurance Code Chapter 823 [~~Article 21.49-1~~]. They [~~are to~~] provide notice of the information required and the location the department expects to find it [~~in which it will be expected to be found~~]. In preparing any statement, notice, or application, the text of the form need not be repeated so long as it [~~there~~] is clear [~~identity of the matter~~] to which matter the answer or material applies. Unless expressly provided otherwise, if any item is inapplicable or the answer [~~thereto~~] is in the negative, an appropriate statement to that effect must [~~shall~~] be made. The forms specified in §§7.209 - 7.214 [~~§§7.209 - 7.213~~] of this title are also referred to in this subchapter as Forms A - F [~~A - E~~]. Form A is also referred to as the acquisition or divestiture statement, Form B as the registration statement, Form C as the summary of changes to the registration statement [~~a disclaimer~~], Form D as prior notice of a transaction, [~~an extraordinary dividend, and~~] Form E as a notice of dividend or distribution, and Form F as an enterprise risk report. [~~an exemption statement.~~] For use in accordance with §7.209(d) and (f) of this title [~~and §7.210(e) of this title~~], the department [~~Texas Department of Insurance~~] adopts by reference the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and available on the department website. [~~Texas Department of Insurance. Copies of this form may be obtained from Financial Analysis and Examinations, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099.~~]

(2) Two complete originally signed copies (unless additional copies are requested by the commissioner) of each statement, notice, or application, including exhibits and all other papers and documents filed [~~as a part thereof,~~] in connection with any acquisition statement filed under §7.209 of this title, and one complete originally signed copy of every other statement, notice, or application, including exhibits and all other papers and documents filed [~~as a part thereof~~], must [~~shall~~] be filed with the commissioner by personal delivery or by mail addressed to: Financial Analysis [~~and Examinations~~], Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104 [~~149099~~], 333 Guadalupe, Austin, Texas 78714-9104 [~~78714-9099~~]. Each statement, notice, or application will [~~shall~~] be subject to the appropriate filing fee provided [~~for~~] in §7.1301 of this title (relating to Regulatory Fees). The appropriate filing fee must [~~shall~~] be forwarded to the Cashier's Office, Mail Code 9999, at the previously stated address [~~Financial Analysis and Examinations of the Texas Department of Insurance~~] under separate cover along with the Fee Transmittal Form available on the department website. [~~a copy of the letter transmitting the statement, notice, or application.~~]

(3) Statements, notices, and applications should be prepared on paper 8 1/2 inches by 11 inches or 8 1/2 inches by 14 inches in size and preferably bound at the top or top lefthand corner. All copies of any statement, notice, application, exhibit, or financial statement must [~~shall~~] be clear, easily readable, and suitable for photocopying. Debit in credit categories and credits in debit categories must [~~shall~~] be designated so as to be clearly distinguishable [~~as such~~] on photocopies. Statements, notices, and applications must [~~shall~~] be in [~~the~~] English [~~language~~] and monetary values must [~~shall~~] be stated in United States currency. If any exhibit or other paper or document filed with a statement, notice, or application is in a foreign language, it must [~~shall~~] be accompanied by a translation into [~~the~~] English [~~language~~] and any monetary value shown in a foreign currency must [~~shall~~] be converted into United States currency with the rate of exchange [~~used~~] disclosed in the submission.

(4) Every statement, notice, or application must [~~shall~~] state on the cover [~~face~~] page [~~thereof~~] the names and addresses of all persons on whose behalf it [~~the same~~] is made.

(b) Incorporation by reference, summaries, and omissions.

(1) Information required by any item of any statement, notice, or application may be incorporated by reference in answer or partial answer to another item. Information contained in any instrument or document filed with the commissioner within five years and currently remaining on file may be incorporated by reference. The [~~Such~~] reference must [~~shall~~] clearly identify the material and indicate it is incorporated by reference.

(2) The right to incorporate by reference does not apply to §7.209 [~~and §7.213~~] of this title [~~(relating to Form A and Form E~~]) or to a completely restated up-to-date registration statement filed in accordance with §7.203(g) of this title (relating to Registration of Insurers) and §7.210 of this title [~~(relating to Form B)~~].

(3) Where an item requires a summary or outline of the provisions of any document, only a brief statement must [~~shall~~] be made as to the most important provisions of the document. In addition to

the [such] statement, the summary or outline may incorporate by reference particular parts of any exhibit or document for which reference is allowed by these sections. The particular page and paragraph of the exhibit or document to which reference is made must be specified. If two or more documents required to be attached as exhibits are substantially identical in all material respects, a copy of only one of the [such] documents need be filed. A schedule must [shall] be attached identifying and detailing the ways the [the details in which such] other document differs from the filed exhibit.

(4) By use of a reference, the person filing is [shall be] deemed to have verified the accuracy of the information referred to as though it was an original statement, unless the person filing identifies the [such] information as being not verified by the person filing.

(c) Additional information and exhibits. In addition to the information expressly required to be included in the forms set out in these sections the filer must add any [there shall be added such] further material information needed[, if any, as may be necessary] to make the information contained [therein] not misleading. The person filing may also file [such] exhibits [as desired] in addition to those expressly required [by the statement]. The [Such] exhibits must [shall] be so marked as to indicate clearly the subject matters to which they refer.

(d) Amendment. Any amendment to a statement, notice, or application must [shall] include on the top of the cover page the phrase "Amendment No." [to] and must [shall] indicate the date of amendment and not the date of the original filing.

(e) Information unknown or unavailable. [Information required need be given only insofar as it is known or reasonably available to the person filing the statement.] If any required information is unknown and not reasonably available to the person filing, either because [the] obtaining the information [thereof] would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions:[.]

(1) The person filing must [shall] give the [such] information on the subject as the person [he] possesses or can acquire without unreasonable effort or expense, together with the sources [thereof].

(2) The person filing must [shall] include a statement either demonstrating that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to the [such] person for the information.

§7.202. Definitions.

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

(1) (No change.)

(2) Affiliate--An affiliate of, or person affiliated with, a specific person[,] is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. If the [such] controlling person includes a member of the immediate family of a person, any other person that is an affiliate of such family member is [shall be] deemed to be an affiliate of the [such] controlling person.

(3) Commercially domiciled insurer--A foreign or alien insurer authorized to do business in this state, that during its three preceding fiscal years taken together, or any lesser period if it has been licensed to transact business in this state only for that lesser period, has written an average of more gross premiums in this state than it has written in its state of domicile during the same period, and such gross premiums constitute 30 percent [30%] or more of its total gross premiums everywhere in the United States for that three-year or lesser period, as reported in its three most recent annual statements. To determine if an insurer is a commercially domiciled insurer, the annual average ratio for premium receipts addressed in subparagraphs (A) and (B) of this paragraph must [shall] be calculated, as follows:

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

(4) Commissioner--The commissioner of insurance of the State of Texas, the commissioner's [senior associates,] associates[,] or deputies, or their designees, as appropriate.

(5) Control--The term "control," including the terms "controlling," "controlled by," and "under common control with," means the power [possession], direct or indirect, [of the power] to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is [shall be] presumed to exist if any person, directly or indirectly, or with members of the person's immediate family, owns, controls, or holds [with] the power to vote, or if any person other than a corporate officer or director of a person holds proxies representing 10 percent [10%] or more of the voting securities or authority of any other person, or if any person by contract or agreement is designated as an attorney-in-fact for a Lloyd's plan insurer under the Insurance Code[,] Chapter 941, or for a reciprocal or interinsurance exchange under the Insurance Code[,] Chapter 942. This presumption may be rebutted by a showing made in the manner provided by the Insurance Code [Act,] §823.005, that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest with notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect, where a person exercises, directly or indirectly, either alone or pursuant to an agreement with one or more other persons such a controlling influence over the management or policies of an authorized insurer as to make it necessary or appropriate in the public interest or for the protection of the policyholders of the insurer that the person be deemed to control the insurer.

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

(8) Controlling producer--An insurance broker or brokers or any person, firm, association, or corporation domiciled, licensed, or operating in a state other than Texas, when, for any compensation, commission, or other thing of value, such person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than such person, firm, association, or corporation, and who, directly or indirectly:

(A) (No change.)

(B) writes or places, in any calendar year, an aggregate amount of gross written premiums with the [such] controlled property and casualty insurer which is equal to or greater than 5.0 percent [5.0%] of the admitted assets of the [such] insurer as reported in the [such] insurer's quarterly statement filed as of September 30 [30th] of the prior year. The term "producer" or "controlling producer" as used in these sections is not intended to include an agent or any independent agent acting on behalf of the controlled insurer, licensed pursuant to the Insurance Code[,] Chapter 4001 [21], Subchapter A, and any subagent or representative of the agent, who acts [as such] in the solicitation of, negotiation for, or procurement or making of an insurance contract, if the agent is not also acting on behalf of an insured as set forth in this

paragraph, in the transaction in question. The term "producer" or "controlling producer" as used in these sections is not intended to include an attorney-in-fact acting on behalf of a licensed Lloyd's or licensed reciprocal or interinsurance exchange.

(9) Director--A person elected or appointed as a member of a board of directors responsible for the management of an insurer. The term must [~~shall~~] also include an attorney-in-fact of a Lloyds or reciprocal or interinsurance exchange who is charged with responsibility for the management of an insurer.

(10) Divesting person--A person who has control of a domestic insurer and who intends to divest control of the domestic insurer.

(11) Divestiture--An abandonment of control of a domestic insurer by a divesting person that does not result in the transfer of control to another person.

(12) Enterprise risk--Any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything:

(A) that would cause the insurer's risk-based capital to fall into company action level; or

(B) that would cause the insurer to be in hazardous financial condition.

(13) [~~(10)~~] Executive officer--The chairman of the board of directors, the president, any vice-president of an applicant in charge of a principal business unit, division, or function (such as sales, administration, finance, or underwriting), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for an applicant. Executive officers of subsidiaries may be deemed executive officers of an applicant if they perform [~~such~~] policy-making functions for an applicant.

(14) [~~(11)~~] Foreign insurer--Includes an alien insurer.

(15) [~~(12)~~] Holding company--Any person who directly or indirectly controls any insurer, but not including any agency, authority, or instrumentality of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state [~~except that it shall not be deemed to include: the United States, a state or any political subdivision, agency or instrumentality thereof~~] or any corporation which is wholly owned, directly or indirectly, by any of them. [~~one or more of the foregoing.~~]

(16) [~~(13)~~] Immediate family--A person's spouse, father, mother, children, brothers, sisters, and grandchildren, the father, mother, brothers, and sisters of the person's spouse, and the spouse of the person's child, brother, [~~or~~] sister, mother, father, or grandparent.

(17) [~~(14)~~] Insurance holding company system--Two [~~Consists of two~~] or more affiliated persons, one or more of which is an insurer.

(18) [~~(15)~~] Insurer--Includes all insurance companies organized or chartered under the laws of this state, commercially domiciled insurers, or insurers licensed to do business in this state, including capital stock companies, mutual companies, farm mutual insurance companies, title insurance companies, fraternal benefit societies, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, county mutual insurance companies, Lloyds' plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies, [~~and~~] group hospital service companies[~~,~~] and health maintenance organizations, and any other entity which is [~~made~~] subject to the Insurance Code[~~,~~] Chapter 823 by applicable law, but does [~~except that it shall~~] not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(19) [~~(16)~~] Person--An individual, [~~a~~] corporation, [~~a~~] partnership, [~~an~~] association, [~~a~~] joint stock company, [~~a~~] trust, [~~an~~] unincorporated organization, or [~~any~~] similar entity or [~~any~~] combination of them [~~the foregoing~~] acting in concert, but not a [~~shall not include any~~] securities broker performing only [~~no more than~~] the usual and customary broker's function.

(20) [~~(17)~~] Security holder of a specified person--One [~~Of a specified person is one~~] who owns any security of the [~~such~~] person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing. The term "debt obligation" does [~~shall~~] not include trade, commercial, or open accounts, matured claims, or agents' commissions.

(21) [~~(18)~~] Subsidiary of a specified person--An [~~Of a specified person is an~~] affiliate controlled by the [~~such~~] person directly or indirectly through one or more intermediaries.

(22) [~~(19)~~] Ultimate controlling person--That person which is not controlled by another person (as defined in this subsection).

(23) [~~(20)~~] Voting security--Any security or other instrument giving or granting to the holder the power to vote at a meeting of shareholders, [~~of a person~~] for or against the election of directors, or any other matter involving the direction of the management and policies of the [~~such~~] person, or any other security or instrument [~~which~~] the department [~~Texas Department of Insurance~~] deems to be of similar nature including, but not limited to, those described in the [~~such~~] rules and regulations [~~as~~] the department [~~Texas Department of Insurance~~] may prescribe in the public interest as a voting security.

(b) Exemption--Commercially Domiciled Insurer.

(1) The commissioner may exempt from the provisions of the Insurance Code Chapter 823 and these sections, except the registration requirement, any commercially domiciled insurer if the commissioner determines [~~that~~] the insurer has assets physically located in this state or an asset to liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state. The exemption granted under this subsection must [~~shall~~] set forth the specific criteria under which it is granted and will [~~shall~~] be subject to annual review. The commissioner may, after notice and opportunity for hearing, rescind an exemption granted to a commercially domiciled insurer under the provisions of the Insurance Code Chapter 823 and these sections. A rescission of an exemption must [~~shall~~] set forth the rationale for the rescission. Requests for an exemption under this subsection must [~~shall~~] be filed with [~~the~~] Financial Analysis [~~Division~~], Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104 [~~149099~~], 333 Guadalupe, Austin, Texas 78714-9104 [~~78714-9099~~]. The request must contain a signed and notarized affidavit of an executive officer of the insurer that, should the exemption be granted, the insurer will [~~has agreed to~~] notify [~~the~~] Financial Analysis [~~Division~~] within 10 [~~ten~~] days after it no longer meets the criteria set out in this section on which the exemption is based. In determining that a commercially domiciled insurer has sufficient assets to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to policyholders of this state, the commissioner must [~~shall~~] give consideration to the matters contacted in subparagraphs (A) - (D)

of this paragraph in connection with an exemption requested under the Insurance Code §823.015, and these sections.

(A) Assets in Texas, which are either:

(i) (No change.)

(ii) qualifying authorized investments under the Insurance Code comprising 20 percent [~~20%~~] of the insurer's admitted assets and physically located in Texas.

(B) Adequacy of policyholder surplus, based upon:

(i) - (ii) (No change.)

(iii) the insurer having capital and surplus equal to 250 percent [~~250%~~] of the minimum risk-based capital described in §7.402 of this title [~~chapter~~] (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs); or

(iv) (No change.)

(C) - (D) (No change.)

(2) The provisions of this subchapter do [~~shall~~] not apply to a foreign or alien insurer if the commissioner has approved a total withdrawal plan from writing all lines of insurance for the [~~such~~] insurer under the Insurance Code Chapter 827.

§7.203. Registration of Insurers.

(a) Registration. Except as provided by the Act, every insurer [~~which is~~] authorized or incorporated to do business in this state and [~~which~~] is a member of an insurance holding company system must [~~shall~~] register in accord [~~accordance~~] with the Act[~~, §3~~]. [~~An insurer which is a member of an insurance holding company system which ceases to be exempt from regulation under the Act, §2(r), shall register in accordance with the Act, §3.~~] The exemption from registration for a foreign insurer does not apply to a commercially domiciled insurer doing business in this state; nor to a commercially domiciled insurer granted an exemption under §7.202 of this title (relating to Definitions). The commissioner must [~~Commissioner shall~~] terminate the registration of a commercially domiciled insurer when it is demonstrated that it no longer meets the definition of commercially domiciled insurer in [~~subparagraph (3) of~~] §7.202 of this title [~~(relating to Definitions)~~].

(b) Information filing from insurers. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system and is not required to register under subsection (a) of this section must [~~shall~~] furnish to the commissioner [~~of insurance~~] a copy of the registration statement or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction and all amendments [~~thereto~~], if required by the commissioner.

(c) Information and forms required. Every insurer subject to registration must [~~shall~~] file a registration statement in accord [~~accordance~~] with §7.210 of this title (relating to Form B), §7.211 of this title (relating to Form C), and as applicable, to §7.214 of this title (relating to Form F), providing current information about the requested matters.

(d) Materiality. Information which is not material for the purposes of the Act, [~~§3,~~] need not be filed pursuant to the Act, §823.054 [~~§3(b) and (d). See the Act, §3(c)~~], for certain requirements respecting materiality. See subsection (f) of this section for the rule on material changes.

(e) Amendments to registration statements. Each registered insurer must [~~shall~~] keep current the information required to be disclosed in its registration statement by reporting all material changes or additions (whether single transactions or cumulative in total). The [~~Such~~] amendment must [~~shall~~] be in accord [~~accordance~~] with §7.210 of this title [~~(relating to Form B)~~], the registration statement, the cover page requirements of §7.201(d) of this title (relating to Forms Filings), and with a positive statement as to the items of the form not being amended instead of setting out the [~~such~~] unamended portions. The [~~Such~~] amendment must [~~shall~~] be filed within 15 days after the end of the month in which the registered insurer learns of the [~~each such~~] change or addition. Any transaction that is [~~formally~~] approved by [~~official order of~~] the commissioner is [~~under any of the following enumerated provisions shall be~~] deemed to be an amendment to the registration statement without further action or filing.[~~:~~]

[~~(1) the Act, §4;~~]

[~~(2) any transactions reported in an acquisition statement (Form A) under the Act, §5;~~]

[~~(3) the Insurance Code, Article 21.25, §§1-5, dealing with the merger or consolidation of two or more insurers and complying with the terms of such article;~~]

[~~(4) the Insurance Code, Article 11.20;~~]

[~~(5) the Insurance Code, Article 11.21;~~]

[~~(6) the Insurance Code, Article 14.13;~~]

[~~(7) the Insurance Code, Article 14.61;~~]

[~~(8) the Insurance Code, Article 14.63;~~]

[~~(9) the Insurance Code, Article 21.26, provided that all or 100% of the stock is initially and simultaneously purchased in order to effect a total reinsurance;~~]

[~~(10) the Insurance Code, Article 22.15, provided that all requirements of the article are met;~~]

[~~(11) the Insurance Code, Article 22.19, provided that the reinsurance is a total direct reinsurance; and~~]

[~~(12) any other transaction formally approved by official order of the commissioner under authority authorized by any other provisions of the Insurance Code.~~]

(f) Material changes. The following occurrences are [~~shall~~], without limiting [~~limitation on~~] the meaning of the phrase "material changes," [~~be~~] deemed [~~to be~~] material changes for [~~the~~] purposes of filing an amendment to the registration statement:

(1) any acquisition of a voting security of a domestic insurer, directly or indirectly, by a person in control of the [~~such~~] domestic insurer if, after the [~~such~~] acquisition, the [~~such~~] person, directly or indirectly, owns or controls less than 50 percent [~~50%~~] of the then issued and outstanding voting securities of the [~~such~~] domestic insurer, in which case §7.210(b) and (c) of this title must [~~(relating to Form B) shall~~] be made current;

(2) any acquisition of a voting security of a domestic insurer, directly or indirectly, by a person that[~~,~~] prior [~~thereto~~], directly or indirectly, owns or controls more than 50 percent [~~50%~~] of the then issued and outstanding voting securities of the [~~such~~] domestic insurer, in which case §7.210(b) and (c) of this title must [~~(relating to Form B) shall~~] be made current;

(3) a change in the control of the registrant, in which case the entire registration statement must [~~shall~~] be made current ([~~this paragraph is effective~~] notwithstanding any other provision of this subchapter);

(4) a change in the information required by §7.210(f) and (g) of this title [~~(relating to Form B)~~], in which case the respective subsection must [~~shall~~] be made current;

(5) a change of the chief executive officer, president, or more than one-third of the directors reported in §7.210(e) of this title [(relating to Form B)], in which case the respective subsection must [shall] be made current;

(6) any transaction with an affiliate or affiliates which, when taken together with all other transactions with affiliates [(]excluding those transactions approved under §7.204(a)(1) of this title (relating to Transactions Subject to Prior Notice [Commissioner's Approval Required]) and those transactions for which notification is given under §7.204(a)(2) occurring within 12 months next preceding, in the aggregate or cumulatively involve the lesser of one-half of 1.0 percent [1.0%] or more of an insurer's admitted assets, or 5.0 percent [5.0%] or more of an insurer's surplus, calculated as of the 31st day of December next preceding. In this [such] case, §7.210(c) and (f) of this title must [(relating to Form B) shall] be made current together with a report of all transactions with affiliates regardless of size within 12 months next preceding. After the [such] transactions are reported and the filings pursuant to §7.210(c) and (f) are made current, each subsequent transaction with an affiliate which, when taken together with those transactions which occurred within the 12 months next preceding, were reported pursuant to this subsection and which aggregately or cumulatively involve the lesser of one-half of 1.0 percent [1.0%] or more of an insurer's admitted assets, or 5.0 percent [5.0%] or more of an insurer's surplus, calculated as of the 31st day of December next preceding, must [shall] be reported pursuant to subsection (e) of this section [§7.203(e) of this title (relating to Registration of Insurers)].

(g) Annual amendment. Within 120 days after the end of each fiscal year of the ultimate controlling person (that person which is not controlled by another person) of the insurance holding company system, the registrant must [shall] file an annual registration statement. An insurer required to file an annual registration statement must also furnish a summary of material changes from the prior year's annual registration statement pursuant to §7.211 of this title. [an amendment to the registration statement which shall make the registration statement current. Within 120 days of the end of each calendar year ending in a five or a zero, the registrant shall file a completely restated up-to-date registration statement as set out in §7.210 of this title (relating to Form B), with amendments consolidated therein. The registrant is not required to file an annual amendment to its registration statement under this subsection in the year that it files a completely restated up-to-date registration statement. The registration statement referred to in §7.1301(d)(22) of this title (relating to Regulatory Fees) includes each annual amendment to the registration statement and the completely restated up-to-date registration statement.]

(h) Termination of registration. The commissioner must [shall] terminate the registration of any insurer as provided in the Insurance Code §823.056. [Act, §3(f).]

(i) Consolidated filing. Any licensed insurer may file a consolidated registration statement or any amendment [thereto] on behalf of itself and any affiliated insurer or insurers which are required to register under subsection (a) of this section, if so authorized by such affiliates. Each registration statement may include information regarding any insurer in the insurance holding company system even if the [such] insurer is not authorized to do business in this state. Each licensed insurer in the [such] filing must [shall undertake the duty to] determine the correctness of the entire statement and [any] amendments and is bound by the terms of the entire statement and [or] amendment. The [Such] statement may be made under the provisions of subsection (j) of this section.

(j) Alternative registration.

(1) In lieu of filing a registration statement as specified in §7.210 of this title [(relating to Form B)], a licensed insurer may file a copy of the registration statement or similar report [which] it is required to file in its state of domicile (or a report [which] it is required to file in another state where it is licensed if its state of domicile requires no such report) provided:

(A) the statement or report contains information substantially similar to information required [to be furnished as specified] in §7.210 of this title [(relating to Form B)] and any of the [such] information not in the [such] statement or report is provided by supplement; and

(B) (No change.)

(2) Whether [The question of whether] the filing insurer is the principal insurer in the insurance holding company system is a question of fact.[;] An [an] insurer filing a registration statement (or report in lieu of the information specified in §7.210 of this title [(relating to Form B)] on behalf of an affiliated insurer must [shall] set forth a simple statement of facts which will substantiate the filing insurer's claim that it[, in fact,] is the principal insurer in the insurance holding company system.

(3) (No change.)

(4) The commissioner may require under this subsection or subsection (i) of this section separate filings if the commissioner [he] deems the [such] filings necessary in the interest of clarity, ease of administration, or the public good.

(k) Enterprise Risk Report. The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to the Insurance Code §823.0595 must furnish the required information on Form F, which is made a part of these regulations.

(l) [(k)] Exemptions. The provisions of this section do [shall] not apply to any insurer, information, or transaction if and to the extent exempted by [that] the commissioner by rule, regulation, or order [shall exempt the same].

(m) [(l)] Disclaimer.

(1) Any person may file with the commissioner a disclaimer of control or affiliation with any insurer, or the [such a] disclaimer may be filed by the [such] insurer or any member of an insurance holding company system as a separate filing. [The disclaimer shall be in accordance with §7.211 of this title (relating to Form C) and shall disclose all material relationships and bases for affiliation between such persons and such insurer as well as the basis for disclaiming such affiliation.]

(2) A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (referred to as the "subject") must contain the following information:

(A) the number of authorized, issued, and outstanding voting securities or rights of the subject;

(B) with respect to the person whose control is denied and all affiliates of the person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly;

(C) all material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of the person; and

(D) a statement explaining why the person should not be considered to control the subject.

(3) The applicant must simultaneously furnish a [~~A~~] copy of any disclaimer filed with the commissioner to the insurer, if the affected insurer is not a party to it [~~thereto, shall also be furnished by the applicant to the insurer at the same time it is filed with the commissioner~~]. The insurer must [~~shall~~], within 15 business days after receipt [~~thereof~~], unless the time is extended by the commissioner for good cause, respond to the matters raised in the disclaimer.

(4) The applicant of a disclaimer which has been allowed must notify the commissioner within 15 days after the end of the month if any information constituting the basis for the disclaimer is incomplete, inaccurate, or no longer accurate. The commissioner may disallow the disclaimer for failure to provide the information.

(5) After a disclaimer has been filed, the insurer is [~~shall be~~] relieved of the [~~any~~] duty to register or report under subsection (a) of this section which may arise out of the insurer's relationship with the [~~such~~] person unless and until the commissioner disallows the [~~such a~~] disclaimer. If the commissioner disallows a disclaimer, the party who filed the disclaimer may request an administrative hearing which must be granted by the commissioner. [~~Unless disallowed by the commissioner, a disclaimer filed under this subsection relieves a person of the duty to comply with the requirements of the Act, §5(a)-(c). The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.~~]

(6) After a disclaimer of control or affiliation has been filed by any person, any acquisition, in any manner, directly or indirectly, of a voting security of the domestic insurer by the [~~such~~] person is [~~shall be~~] subject to the Act, [~~§5,~~] in the absence of the filing within 15 days after the end of the month in which the acquisition of an additional voting security occurs, of an amendment makes [~~which shall make~~] current the disclaimer of control or affiliation previously filed pursuant to this subsection.

(n) [~~(m)~~] Violations. The failure to file a registration statement or any amendment to a Form B (relating to Registration Statement) or Form F (relating to Enterprise Risk Report) [~~thereto required~~] within the time specified for the [~~such~~] filing is [~~shall be~~] a violation of this section.

(o) [~~(n)~~] Dividends and distributions. Each registered insurer must [~~shall~~], by personal delivery, by telecopy or facsimile, or by mail addressed to: Financial Analysis [~~and Examinations~~], Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104 [~~149099~~], 333 Guadalupe, Austin, Texas 78714-9104 [~~78714-9099~~], provide notice to the commissioner of all dividends and other distributions to shareholders within two business days following the declaration [~~thereof~~] and at least 10 [~~ten~~] calendar days prior to payment in Form E (relating to Notice of Dividend or Distribution) [~~the form prescribed by the commissioner and adopted herein by reference as Form HCDividend (Rev. 01/2002)~~] and the [~~such~~] notice is [~~shall be~~] deemed an amendment to the registration statement without further action or filing. Prepayment notices will be considered promptly. Each prepayment notice must [~~shall~~] be accompanied by documentation supporting each of the standards specified in the Insurance Code §823.008 [~~Act, §4(b)~~], unless the [~~such~~] documentation has previously been provided during the current calendar year and the person to whom the [~~such~~] documentation was sent is identified. Dividends and distributions must [~~shall~~] be reviewed by the commissioner and, if the standards in the Act, §823.008 [~~§4(b)~~] are not met, the commissioner will [~~shall~~] take appropriate action, including, but not limited to, that provided under the Insurance Code §§82.001 - 82.056, 83.001 - 83.153 and Chapters 403, 404, 441, and 443 [~~Articles 1.32, 21.28, 21.28-A, 21.31, and 21.32~~]. All reported dividends and distributions must [~~shall~~] be reviewed annually in the registration statement filed pursuant to §7.210 of this title. See §7.204(d) of this title [~~(relating to Commissioner's Approval Required)~~] for requirements regarding extraordinary dividends and distributions.

§7.204. Transactions Subject to Prior Notice [~~Commissioner's Approval Required~~].

(a) Prior approval and notice.

(1) The prior written approval of the commissioner is [~~shall be~~] required for the transactions specified in the Act, §823.102 [~~§4(d)(1)~~]. This section only applies to sales, purchases, exchanges, loans or extensions of credit or guarantees, or investments, including an amendment or modification of an affiliate agreement previously filed under this section, that involve more than the lesser of five percent of the insurer's admitted assets or 25 percent of the insurer's surplus, as of December 31 of the year preceding the year in which the transaction occurs.

(2) The following transactions pursuant to the Act, §823.103, including any amendments or modification of an agreement as previously filed between a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into any like [~~such~~] transaction at least 30 days prior [~~thereto~~], or a [~~such~~] shorter period as the commissioner [~~he~~] may permit, and the commissioner [~~he~~] has not disapproved it within the [~~such~~] period:

(A) sales, purchases, exchanges, loans or extensions of credit or guarantees, or investments, involving either more than one-half of 1.0 percent [~~1.0%~~] but less than 5.0 percent [~~5.0%~~] of the insurer's admitted assets, or more than 5.0 percent [~~5.0%~~] but less than 25 percent [~~25%~~] of the insurer's surplus, whichever is the lesser, as of the 31st day of December next preceding, and transactions in the securities of affiliates other than a subsidiary of an insurer, which are not subject to paragraph (1) of this subsection;

(B) reinsurance agreements, including reinsurance treaties, or pooling agreements, or any amendments or modification to any agreement, and [~~or agreements or modifications to those treaties or agreements, including~~] those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(C) (No change.)

(D) management or service agreements, cost sharing agreements, rental or leasing agreements must at a minimum, to the extent not inconsistent with applicable law or regulation, and as applicable:[;]

(i) identify the person providing services and the nature of the services;

(ii) set forth the methods to allocate costs to include the Insurance Code §823.101(e);

(iii) require timely settlement, at least every 90 days, and compliance with the requirements in the Accounting Practices and Procedures Manual published by the National Association of Insurance Commissioners;

(iv) prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(v) state that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(vi) define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

(vii) specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

(viii) state that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;

(ix) include standards for termination of the agreement with and without cause;

(x) include indemnifying the insurer in the event of gross negligence or willful misconduct by the affiliate providing the services;

(xi) specify that, if the insurer is placed in receivership or seized by the commissioner under the Insurance Code Chapter 443:

(I) all of the rights of the insurer under the agreement extend to the receiver or commissioner; and

(II) all books and records will immediately be made available to the receiver or the commissioner, and must be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request;

(xii) specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to the Insurance Code Chapter 443; and

(xiii) specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under the Insurance Code Chapter 443, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered;

(E) agreements to consolidate federal income tax returns, which agreements must [~~shall~~] provide that a domestic insurer will be adequately indemnified in the event the Internal Revenue Service levies upon the insurance company's assets for unpaid taxes in excess of the amount paid under the agreement;

(F) (No change.)

(G) participation in an investment pool by a property and casualty insurer pursuant to the Insurance Code Chapter 424 [~~Article 2.10-5~~]; and

(H) (No change.)

(3) A domestic insurer may not enter into transactions that are part of a plan or series of similar transactions with persons within the holding company system to avoid the statutory threshold amount and [~~thus~~] avoid review. If the commissioner determines that the transactions were entered into over any 12-month period for that purpose, the commissioner may consider the series of transactions with regard to their cumulative effect and may apply the applicable statutory thresholds or the commissioner may apply sanctions under the Code.

(4) Nothing in this rule will [~~herein contained shall be deemed to~~] authorize or permit any transactions which, in the case of a noncontrolled insurer, would be otherwise contrary to law.

(5) The commissioner, in reviewing transactions [~~hereunder~~], must [~~shall~~] consider whether the transactions comply with the standards set forth in subsection (c) of this section and whether they may adversely affect the interest of policyholders. Any disapproval by the commissioner of any of the [~~such~~] transactions must [~~shall~~] set forth the specific reasons for the [~~such~~] disapproval.

(6) The approval of any transaction under this subsection is [~~shall be~~] deemed an amendment under §7.203(e) of this title (relating to Registration of Insurers) to an insurer's registration statement without further filing.

(b) Transactions. An insurer required to request [~~Requests for~~] approval of transactions pursuant to subsection (a)(1) of this section and give notices of proposed transactions pursuant to subsection (a)(2) of this section, must furnish the required information on Form D (relating to Prior Notice of a Transaction) [~~shall be accompanied by descriptions of the essential features of such transactions which are reasonably adequate to permit proper evaluation thereof by the commissioner~~] including the applicable filing fee provided for in §7.1301(d)(23) of this title (relating to Regulatory Fees). The [~~Such~~] descriptions must [~~shall~~] in all cases include at least the following: the nature and purpose of the transaction; the nature and amounts of any payments or transfers of assets between the parties; the identities of all parties to the [~~such~~] transactions; whether any officers or directors of a party are pecuniarily interested [~~therein~~], and copies of any proposed contracts, agreements, or memoranda of understanding between the parties relating to the transaction along with sufficient competent documentation evidencing compliance with the standards specified in the Insurance Code §823.101 [~~Act, §4(a)~~], and evidencing that the transaction will not adversely affect the interest of policyholders. Proposed contracts, agreements, or memoranda of understanding must [~~shall~~] provide for settlement within 90 days. No [~~such~~] request or notice is [~~shall be~~] deemed filed with the commissioner until the date all of the [~~such~~] material has been provided.

(c) Transactions with affiliates and others. Material transactions by registered insurers with their holding companies, subsidiaries, or affiliates are subject to the standards specified in the Act, §823.101 [~~§4(a)~~].

(d) Extraordinary dividends and other distributions.

(1) An [~~No~~] insurer subject to registration under §7.203(a) of this title must not [~~(relating to Registration of Insurers) shall~~] pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(A) 30 days after the commissioner has received written notice in accord [~~accordance~~] with §7.213 [~~§7.212~~] of this title (relating to Form E [~~D~~]) of the declaration [~~thereof~~], including the applicable filing fee pursuant to §7.1301(d)(23) of this title, provided [~~and~~] the commissioner has not [~~within such period~~] disapproved the [~~such~~] payment; or

(B) the commissioner approves the [~~shall have approved such~~] payment within the [~~such~~] 30-day period. The written notice required under this paragraph will [~~shall~~] be deemed filed with the commissioner only when all material sufficient to constitute a complete filing, including documentation to support each of the standards set forth in the Act, §823.008 [~~§4(b)~~], and the payment of any required filing fee pursuant to §7.1301(d)(23) of this title have been provided.

(2) For purposes of these sections an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other div-

idends or distributions made within the preceding 12 months exceeds the greater of:

(A) 10 percent (20 percent [~~10%~~ ~~(20%~~] if the [~~such~~] insurer is a title insurer) of the [~~such~~] insurer's surplus as regards policyholders as of the 31st day of December next preceding; or

(B) the net gain from operations of the [~~such~~] insurer, if the [~~such~~] insurer is a life or title insurer, or the net income, if the [~~such~~] insurer is not a life or title insurer, for the 12-month period ending the 31st day of December next preceding;

(C) an extraordinary dividend or distribution must, [~~shall~~] not include pro rata distributions of any class of an insurer's own securities;

(D) in determining the 12-month cumulative amount for dividends or distributions, the calculation must [~~shall~~] be based on the declaration date(s) of the [~~such~~] dividends or distributions.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution under the conditions specified in the Act, §823.107 [~~§4(c)(3)~~].

(e) Adequacy of surplus. For the purposes of these sections, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the factors specified in the Act, §823.008 [~~§4(b)~~], among others, must [~~shall~~] be considered.

§7.205. Acquisition or Divestiture Statements--Filing Requirements.

(a) Filing Requirements. Filing and other regulatory requirements for acquisitions, [~~or~~] changes of control, or divestitures and certain other matters as specified in the Act, §823.153 and §823.154 [~~§5(a)~~], are governed by the Act, §823.153 and §823.154 [~~§5(a)~~]. For purposes of this subsection, a domestic insurer as defined in the Act, §823.153, includes [~~§5(a)(2), shall include~~] any person controlling a domestic insurer, including a commercially domiciled insurer, unless the [~~such~~] person is, either directly or through its affiliates, primarily engaged in business other than the business of insurance. A change or substitution of an attorney-in-fact of a Lloyds' or reciprocal or interinsurance exchange is subject to the Act, §823.154. [~~§5. An acquisition of control of a domestic insurer is subject to the Act, §5, regardless of the domestic insurer's exemption from regulation under the Act, §2(r).~~] A failure to file complete and accurate information in all material respects is grounds for a denial by the commissioner under the Act, §823.157 [~~§5(c)~~].

(b) Form and content of statement. The statement required by subsection (a) of this section (elsewhere referred to as acquisition or divestiture statement) must [~~shall~~] be made in accord [~~accordance~~] with §7.209 of this title (relating to Form A), the acquisition or divestiture statement. The acquiring party must [~~shall~~] provide additional financial information in [~~the~~] form or substance as required by the commissioner which is material to the finding required by the Act, §823.157 [~~§5(c)(1)(iii)~~]. Any financial information required under the Act, §823.203 [~~§5(b)(3)~~], may be waived by the commissioner if the [~~such~~] information is not deemed material. No statement required by subsection (a) of this section will [~~shall~~] be deemed filed with the commissioner until [~~on~~] the date all [~~such~~] material required and sufficient to constitute a full statement has been provided.

(c) Partnerships and corporate filings. If the person required to file the acquisition statement is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by §7.209 of this title [~~(relating to Form A)~~] be given with respect to each partner of the [~~such~~] partnership or limited partnership, each member of the [~~such~~] syndicate or group, and each person who controls the [~~such~~] partner or member. If any [~~such~~] partner, member, or person is a corporation or if the person required to file the statement referred to in subsection (a) of this section is a corporation, the commissioner may require that the information called for by §7.209 be given with respect to the [~~such~~] corporation and by each executive officer and director of the [~~such~~] corporation, and each person who is directly or indirectly the beneficial owner of more than 10 percent [~~10%~~] of the outstanding voting securities of the [~~such~~] corporation.

(d) Amendment. If any material change occurs in the facts set forth in the acquisition or divestiture statement filed with the commissioner, an amendment setting forth the [~~such~~] change, together with copies of all documents and other material relevant to the [~~such~~] change, must [~~shall~~] be filed with the commissioner and sent to the domestic insurer within two business days after the person learns of the [~~such~~] change.

(e) Acquisition or divestiture of a domestic insurer as defined in subsection (a) of this section.

(1) If the person being acquired or divested is a domestic insurer solely because of the provisions of subsection (a) of this section, the name of the domestic insurer on the cover page should be indicated as follows: "ABC Insurance Company, a subsidiary of XYZ Holding Company."

(2) Where a domestic insurer as defined in subsection (a) of this section is being acquired or divested, references to "the insurer" contained in §7.209 of this title [~~(relating to Form A) shall~~] refer to both the domestic subsidiary insurer and the person being acquired or divested.

(f) Approval or denial by commissioner; hearings. All mergers, acquisitions, [~~or~~] changes of control, or divestitures and other matters [~~as~~] specified in the Act, §823.154 [~~§5(a)~~], and mergers contemplated by the Insurance Code §441.006 [~~Article 21.28-A, §1~~], are subject to the Act, §823.157 [~~§5(c)~~]. The acquiring or divesting party has [~~shall have~~] the burden of providing sufficient competent evidence for the commissioner to make the determinations required under the Act, §823.157 [~~§5(c)(1)~~].

(g) Notices; payment of expenses.

(1) Notices, payments of expenses, and other matters [~~as~~] specified in the Act, §823.156, must [~~§5(d), shall~~] comport with that subsection.

(2) All provisions of the Insurance Code Chapter 823[~~, Article 21.49-1~~], and [~~of~~] this subchapter relating to the timely mailing of a copy of the acquisition or divestiture statement, and relating to the timely mailing of a copy of a [~~the~~] notice of hearing [~~thereon~~] before the commissioner to an insurer, may be waived by the written unanimous consent of the insurer and the person or persons filing such acquisition or divestiture statement. The [~~Such~~] written waiver must [~~shall~~] acknowledge receipt of a copy of the acquisition or divestiture statement.

(h) Exemptions. The provisions of this section do [~~shall~~] not apply to transactions and other matters exempted under the Act, §823.164 [~~§5(e)~~]. A restructuring within an insurance holding company system which results in a direct or indirect change in control of a domestic insurer is subject to the Act, §823.164(h)(1) [~~§5(e)(3)(i)~~]. An acquisition of a voting security of a domestic insurer specified in the Act, §823.164(f)(1) and (2), must [~~§5(e)(4) and (6), shall~~] be disclosed by amendment to the registration statement as provided in §7.203(f) of this title (relating to Registration of Insurers). [~~The written application for exemption in the acquisition of a voting security specified in the Act, §5(e)(5), shall be made in accordance with §7.213 of this title (relating to Form E), the exemption statement. The approval of an application under §7.213 shall be deemed an amendment under~~

§7.203 to an insurer's registration statement without further filing.] An acquisition of a voting security of a domestic insurer by a security holder controlling, directly and indirectly, 50 percent [50%] of the then issued and outstanding voting securities of the [such] domestic insurer, is [shall be] subject to the Act, §823.164(g) [§5(e)(5)]. An acquisition of a voting security of an insurer domiciled in this state which is not subject to the Act, §823.154 [§5(a)(1)], by virtue of the Act, §823.153, is [§5(a)(2), shall be] subject to the Act, §823.164(h)(2) [§5(e)(3)(ii)].

(i) Retention of control. For certain matters relating to retention of control and certain violations of the Act, see the Act, §823.163.

[(1) For certain matters relating to certain violations of the Act, see the Act, §5(f)(1).]

[(2) For certain matters relating to retention of control, see the Act, §5(f) (2).]

(j) Duty of insurer. Authorized insurers must [are under a duty to] notify the commissioner of control of, or of actions to acquire control of, an insurer as required by the Act, §823.161 [§5(g)].

(k) Preliminary filings. Any acquisition or divestiture statement may[, at the discretion of the person or persons filing the same,] be preliminarily filed with the commissioner to obtain [for the purpose of obtaining] a preliminary review by the commissioner. It must [Any such filing shall] be clearly marked or designated as a preliminary filing. The [Such] preliminary filing must [shall] not invoke the requirements of this subchapter or the Insurance Code Chapter 823[, Article 21.49-1], requiring that notice [thereof] be given to the [such] affected insurer involved. The [Such] preliminary filing will [shall] have no legal effect and does [shall] not constitute compliance with the Insurance Code Chapter 823[, Article 21.49-1], and this subchapter. The commissioner is not [shall not be] bound by the preliminary review nor deemed to have in any manner approved the [such] filing.

(l) Violations. The following are [shall be] violations of this section:

(1) (No change.)

(2) the effectuation of, or any attempt to effectuate, an acquisition, [or] change of control of, divestiture, or merger with, a domestic insurer unless the commissioner has approved it [given his approval thereto].

(m) - (n) (No change.)

(o) Producer-controlled property and casualty insurer.

(1) For purposes of this section, a controlling producer, as defined in §7.202(a)(8) of this title (relating to Definitions), is subject to the filing requirements of the Act, [§5,] in addition to the following requirements.

(A) No acquisition of an insurer by a controlling producer in another state may be approved by the commissioner pursuant to the Act, §823.157 [§5(c)(1)], unless the acquiring party demonstrates, to the satisfaction of the commissioner, compliance with the requirements contained in subparagraph (B) of this paragraph.

(B) Approval of the acquisition of an insurer by a controlling producer in another state may not be approved unless the following requirements are met.

(i) Required contract provisions. A controlled insurer must [shall] not accept business from a controlling producer and a controlling producer must [shall] not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the controlled insurer and which contains the following:

(I) a provision that the controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer must [shall] suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination;

(II) a provision that the controlling producer [shall] render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer;

(III) a provision that the controlling producer [shall] remit all funds due under the terms of the contract to the controlled insurer on at [a] least a monthly basis. The due date must [shall] be fixed so that the premiums or installments [thereof] collected are [shall be] remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract;

(IV) a provision that all funds collected for the controlled insurer's account must [shall] be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System;

(V) a provision that the controlling producer [shall] maintain separately identifiable records of business written for the controlled insurer;

(VI) a provision that the contract [shall] not be assigned in whole or in part by the controlling producer;

(VII) a provision that the controlled insurer [shall] provide the controlling producer with its underwriting standards, rules, procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer must [shall] adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions must [shall] be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;

(VIII) a provision establishing the rate and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees must [shall] be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this subclause and subclause (VII) of this clause, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

(IX) a provision that, if the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, the [then such] compensation, must [shall] not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. No [In no event shall the] commissions may be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified;

(X) a provision limiting the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The controlled insurer may establish a different limit for each line or subline of business. The controlled insurer must

[~~shall~~] notify the controlling producer when the applicable limit is approached and must [~~shall~~] not accept business from the controlling producer if the limit is reached. The controlling producer must [~~shall~~] not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(XI) a provision that the controlling producer may negotiate but must [~~shall~~] not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the [~~such~~] automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(ii) Audit committee. Every controlled insurer must [~~shall~~] have an audit committee of the board of directors composed of independent directors. The audit committee must [~~shall~~] annually meet with management, the controlled insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the controlled insurer's loss reserves.

(iii) Reporting requirements.

(I) In addition to any other required loss reserve certification, the controlled insurer must [~~shall~~] annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary, or [~~such~~] other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line or subline of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including incurred but not reported losses, on business placed by the controlling producer.

(II) The controlled insurer must [~~shall~~] annually report to the commissioner in its registration statement filed pursuant to §7.203(g) of this title [~~(relating Annual Amendment)~~] the amount of commissions paid to the controlling producer, the percentage such amount represents of the net premium written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance.

(iv) Disclosure requirements. The controlling producer, prior to the effective date of the policy, must [~~shall~~] deliver written notice to the prospective insured disclosing the relationship between the controlling producer and the controlled insurer, except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer must [~~shall~~] retain in the [~~his~~] records a signed commitment from the subproducer that the subproducer is aware of the relationship between the controlled insurer and the controlling producer and that the subproducer has notified or will notify the insured.

(2) (No change.)

(p) A producer controlled insurer is subject to all the provisions of the Act absent a determination that the laws of its domiciliary state are substantially similar as provided by the Act, §823.014 [~~§18~~].

§7.209. Form A.

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

(c) Identity and background of the applicant.

(1) (No change.)

(2) If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as the [~~such~~] person and any predecessors [~~thereof shall~~] have been in existence and fully describe any business the [~~which such~~] person and any of its affiliates intend to commence.

(3) Furnish a chart or listing clearly identifying the interrelationships between the applicant and all affiliates of the applicant. Indicate in the [~~such~~] chart or listing the percentage of voting securities of each [~~such~~] person [~~which is~~] controlled by the applicant or by any other [~~such~~] person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of [~~such~~] control. As to each person specified in the [~~such~~] chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings looking toward a reorganization or liquidation are pending with respect to any [~~such~~] person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.

(d) Identity and background of individuals associated with the applicant.

(1) Furnish biographical data for the applicant if the [~~such~~] person is an individual, or for all persons who are directors, executive officers, or owners of 10 percent [~~10%~~] or more of the voting securities of the applicant if the applicant is not an individual, with the [~~such~~] biographical data in the form of the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and adopted by reference under §7.201(a)(1) of this title (relating to Forms Filings). [~~Copies of this form are available from Financial Analysis and Examinations, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099~~].

(2) The applicant if the [~~such~~] person is an individual, or for persons who are the chair [~~chairman~~] of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the applicant if the applicant is not an individual, must [~~shall~~] comply with the requirements of Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct).

(e) Nature, source, and amount of funds or other consideration.

(1) Describe the nature, source, and amount of funds or other consideration used or to be used in effecting the merger or other acquisition of control. If any part is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes, and security arrangements. [~~State the name and address of the applicant seeking to acquire control over the insurer.~~]

(2) Explain the criteria used in determining the nature and amount of the consideration.

(3) [~~(2)~~] If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he or she must specifically request that the identity be kept confidential. [~~provided by a commercial lender in the ordinary course of business and if the applicant wishes the identity to remain confidential, he must specifically request that the identity be kept confidential. When confidentiality is requested such identity shall be provided by a separate instrument filed with, but not forming a part of, the acquisition statement.~~]

[(3) If the consideration is to consist in whole or in part of the insurance business and assets of the insurer or of a person controlled by the insurer, state the value thereof and how such value was arrived at.]

(f) Future plans for insurer.

(1) Provide a business plan which describes any plans or proposals which the applicant may have or may contemplate making to cause the insurer to pay dividends or make other distributions, [to] liquidate the [such] insurer, [to] sell any of its assets, [to] merge or consolidate it with any person or persons, [to] make any other material change in its business operations or corporate structure or management, or [to] cause the insurer to enter into material agreements, arrangements, or transactions of any kind with any party, and describe any financial or employment guarantees given to present and contemplated management.

(2) (No change.)

(3) Provide:

(A) an affirmative statement of applicant's and the domestic insurer's compliance with Chapter 22 of this title (relating to Privacy); and[;]

(B) if applicant proposes revisions to the domestic insurer's current privacy policy, the proposed revised privacy policy along with any revised notices required pursuant to §22.12 of this [the] title (relating to Revised Privacy Notices) and any other notices or authorization requests and forms [that] applicant will be required to provide to maintain compliance with Chapter 22 of this title.

(4) For the domestic insurer, provide the full name of each individual proposed to be an executive officer or director of the domestic insurer and the full name of each individual who will be responsible for major areas of operations of the domestic insurer, including, but not limited to, supervision of agents, underwriting, advertising, production of business through agents and through reinsurance, policyholder services, premium accounting, claims processing and litigation, reinsurance cessions, investments, and financial accounting and reporting. For each [such] position, evidence of the [such] individual's ability and experience to perform same by providing biographical data in the form of the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and adopted by reference under §7.201(a)(1) of this title.

(5) (No change.)

(g) Voting securities to be acquired. State the number of shares of the insurer's voting securities and the amount or number of shares convertible into voting securities which the applicant, its affiliates, and any person listed in subsection (d) of this section plan to acquire, and the terms of the offer, request, invitation, agreement, or acquisition, and a statement of the method by which the fairness of the proposal was determined.

(h) Ownership of voting securities. State the amount of each class of any voting security of the insurer which is [legally, directly, indirectly, or] beneficially owned or concerning [of] which there is [the acquiring party or any of its affiliates or any person listed in subsection (d) of this section has] a right to acquire [legal, direct, indirect, or] beneficial ownership by the applicant, its affiliates, or any person listed in subsection (d) of this section.

(i) Contracts, arrangements, or understandings with respect to voting securities of the insurer. Give a full description of any contracts, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, its affiliates, [Provide a copy of any written, or a confirmed description of any oral, agreements, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, any of its affiliates,] or any persons listed in subsection (d) of this section is involved, including, but not limited [without limitation any such agreement, arrangement, or understanding relating] to, [the] transfer of any of the [voting] securities, joint ventures, loan or option arrangements [agreements], puts or calls, guarantees of loans, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements, or understandings have been made.

(j) Recent purchases of voting securities. Describe any purchases of any voting securities of the insurer by the applicant, any of its affiliates, or any person listed in subsection (d) of this section during the 12 calendar months preceding the filing of this statement. Include in the [such] description the dates of purchase, [the] names of the purchasers, and [the] consideration paid or agreed to be paid [therefor]. State whether any [such] shares so purchased are hypothecated.

(k) (No change.)

(l) Agreements with broker-dealers. Provide a copy of any written, or a confirmed description of any oral, agreement, arrangement, or understanding made with any broker-dealer as to the solicitation of voting securities of the insurer for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers [with regard thereto].

(m) Financial statements and exhibits.

(1) Financial statements, [and] exhibits, and financial projections of the insurer and the applicant must [shall] be attached to this statement as an appendix, but list under this subsection the financial statements and exhibits so attached. Projections of the domestic insurer and the applicant must be for a period equal to the greater of three years or the length of time of debt service required by applicant in its acquisition of control and any additional document or papers required by regulation.

(2) The financial statements must [shall] include the annual financial statements of the persons identified in subsection (c)(3) of this section for the preceding three fiscal years (or for such lesser period as the [such] applicant and its affiliates and any predecessors [thereof shall] have been in existence), and similar unaudited financial information as of a date not earlier than 120 days prior to the filing of the statement, accompanied by affidavit or certification of the chief financial officer of the applicant that the [such] unaudited financial statement is true and correct, as of its date, and that there has been no material change in financial condition, as defined by the Act, [§3,] from the date of the financial statement to the date of the affidavit or certification. The [Such] statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if the [such] consolidated statements are prepared in the usual course of business.

(3) Unless exempted by the commissioner, the annual financial statements of the applicant must [shall] be made in accord [accordance] with generally accepted auditing standards and accompanied by the certificate of an independent certified public accountant [to the effect] that the [such] statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the [such] certificate is not available, then the [such] financial statement must [shall] be sworn to by the applicant as correctly reflecting its financial condition, and in that [such] case, the commissioner [of insurance] at the commissioner's discretion may re-

quire the [such] financial statement to be certified by an independent public accountant.

(A) If the applicant is an insurer which is actively engaged in the business of insurance and licensed to do business in this state, it may provide financial statements which conform to the annual statements of the insurer filed with the insurance department of the insurer's domiciliary state and which are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the domiciliary state.

(B) If the applicant is an individual person, the [such] person must [shall] provide a reviewed financial statement accompanied by the certificate of an independent public accountant that he or she is not aware of any material modifications that should be made to the accompanying financial statement [in order] for it to be in conformity with generally accepted accounting principles and must [shall] provide a balance sheet as of a date not earlier than 120 days prior to the filing of the statement and balance sheets for the second and third fiscal years preceding the filing of the statement accompanied by affidavit or certification that each balance sheet is true and correct as of its date.

(4) [(3)] File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material [relating thereto]; and proposed employment, consultation, advisory, or management contracts concerning the insurer[; budget projections of the domestic insurer and the applicant for a period equal to the greater of three years or the succeeding length of time of debt service required by applicant in its acquisition of control; and any additional document or papers required by regulation].

(5) [(4)] In addition to the other material required to be filed by this section, a person [as] described in §7.205(a) of this title (relating to Acquisition or Divestiture Statements-Filing Requirements) must [shall] file, as an exhibit, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years.[;] These [these] reports are for review of the department [Texas Department of Insurance], and are not a part of the material required to be submitted under the Act[, §5(b)(12)]. However, the materials will [shall] be open for public inspection at the offices of the Texas Department of Insurance during the pendency of the application.

(n) Enterprise risk management. As applicable, applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F pursuant to the Insurance Code §823.0595 within 15 days after the end of the month in which the acquisition of control occurs.

(o) Notice regarding divestiture of control pursuant to the Insurance Code §823.154.
Figure: 28 TAC §7.209(o)

(1) Provide the name, title, address, e-mail address and telephone number of the individual to whom notices and correspondence concerning this statement should be addressed.

(2) Provide notice that applicant is divesting control of the above named insurance company(ies) and describe how control is being divested and include the percentage of control being divested.

(3) State the name and address of the recipient(s) of the divestiture of control.

(4) Provide copies of any sales contracts and an organizational chart before and after the divestiture of control.

(5) Describe and state the name of the person in control of the insurer before and after the divestiture of control.

(p) [(n)] Signature and certification. Signature and certification of the following form:
Figure: 28 TAC §7.209(p)
[Figure: 28 TAC §7.209(n)]

§7.210. Form B.

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

(c) Organizational chart. Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system, including all affiliated persons as defined in §7.202(a)(2) of this title (relating to Definitions). The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of the [such] control. As to each person specified in the [such] chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

(d) The ultimate controlling person. As to the ultimate controlling person (that person which is not controlled by another person) in the insurance holding company system, furnish the following information:

(1) - (5) (No change.)

(6) the name and address of any person who holds or owns 10 percent [10%] or more of any class of voting security, the class of the [such] security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and

(7) (No change.)

(e) Biographical information. If the ultimate controlling person is a corporation, organization, limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations. If the ultimate controlling person is an individual, furnish the individual's name and address, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations. [Furnish biographical data for the ultimate controlling person(s) if such person is an individual, or for the directors and executive officers of the ultimate controlling person if the ultimate controlling person is not an individual, with such biographical data in the form of the biographical affidavit form adopted by reference under §7.201(a)(1) of this title (relating to Forms Filings). Copies of this form are available from Financial Analysis and Examinations, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099.]

(f) Transactions, relationships, and agreements.

(1) Briefly describe the following agreements in force, relationships subsisting, and transactions currently outstanding between the registrant and its holding company, its subsidiaries, and its affiliates:

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

(C) investment activities of an investment pool and transactions between pools and participants (the Insurance Code Chapters 424 and 425 [Articles 2.10-5 and 3.33, §4(g)]);

(D) - (L) (No change.)

(M) any affiliated transaction not disclosed in subparagraphs (A) - (L) of this paragraph which is subject to the Act[~~, §4(d)~~]; [~~and,~~]

(N) any pledge of an insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of its insurance holding company system;[~~.~~]

(O) the corporate governance and internal control responsibilities of the insurer's board of directors, including a statement that:

(i) the insurer's senior management or officers have approved and implemented, and continue to maintain and monitor, corporate governance and internal control procedures; and

(ii) the insurer's board of directors oversees corporate governance and internal controls; and

(P) any other information the commissioner requires.

(2) No information need be disclosed if such information is not material. See §7.203(d) of this title (relating to Registration of Insurers). The description must [~~shall~~] be in a manner permitting [~~as to permit~~] the proper evaluation [~~thereof~~] by the commissioner, and must [~~shall~~] include at least the following: the nature and purpose of the transaction; the nature and amounts of any payments or transfers of assets between the parties; the identity of all parties to the [~~such~~] transaction; relationship of the affiliated parties to the registrant; and the holding company section number and/or commissioner's order number [~~applicable thereto~~].

(g) Litigation or administration proceedings. Furnish a [~~A~~] brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any [~~such~~] person is or was the subject; give the names of the parties and the court or agency in which the [~~such~~] litigation or proceeding is or was pending:

(1) criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party [~~thereto~~]; and

(2) (No change.)

(h) Required statement. The insurer must furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

(i) [~~(h)~~] Financial statements and exhibits.

(1) Financial statements and exhibits should be attached to this statement as an appendix. List under this item the financial statements and exhibits [~~so~~] attached.

(2) If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements must include the annual financial statements of the ultimate controlling person and affiliates in the insurance holding company system as of the end of the person's latest fiscal year or any other period as determined by the commissioner.

(3) If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information must be filed for any subsequent period to the extent available. Financial statements may be prepared on either an individual basis or, unless the commissioner otherwise requires on a consolidated basis if consolidated statements are prepared in the usual course of business.

(4) Other than with respect to the preceding, the financial statement must be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the commissioner. Documentation and financial statements filed with the Securities and Exchange Commission or audited Generally Accepted Accounting Principles (GAAP) financial statements are deemed to be an appropriate form and format.

(5) Unless the commissioner permits otherwise, the annual financial statements must be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of the insurer's domiciliary state and are in accord with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

(6) Unless the commissioner permits otherwise, any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review must be conducted in accord with standards for review of personal financial statements published in the *Personal Financial Statements Guide* by the American Institute of Certified Public Accountants. Personal financial statements must be accompanied by the independent public accountant's Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements for the statements to be in conformity with generally accepted accounting principles.

(7) Exhibits must include copies of the latest annual reports to shareholders of the ultimate controlling person, proxy material used by the ultimate controlling person and any additional documents or papers required by regulation.

[~~(2) The financial statements shall include the annual financial statements (including profit and loss) of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year and all subsidiaries of the registrant. Such financial statements may be prepared on either an individual basis, or unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business. The annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of any ultimate controlling person (other than a natural person) and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the annual statement of such insurer filed with the insurance department of the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state. Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by regulation.~~]

(j) Form C required. A Form C, Summary of Changes to Registration Statement, must be prepared and filed with this Form B.

[(i) Copy of the charter or articles of incorporation and bylaws. A copy of the charter or articles of incorporation and bylaws and all amendments thereto of the ultimate controlling person and the subsidiaries of the registrant shall be furnished.]

(k) [(j)] Signature and certification. Furnish signature [Signature] and certification of the following form:
Figure: 28 TAC §7.210(k)
[Figure: 28 TAC §7.210(j)]

§7.211. Form C.

(a) Summary of Material Changes to Registration Statement is required as follows.
Figure: 28 TAC §7.211(a)

(b) Furnish a brief description of all items in the current annual registration statement which represent material changes from the prior year's annual registration statement. The description must be in a manner permitting proper evaluation by the commissioner, and must include specific references to the items in the annual registration statement and to the terms contained.

(c) Changes occurring under §7.210(c) of this title (relating to Form B) in the percentage of each class of voting securities held by each affiliate need only be included where the changes result in ownership or holdings of 10 percent or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

(d) Changes occurring under §7.210(e) of this title need only be included where an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

(e) If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of the change must be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

(f) The insurer must furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose is to avoid statutory threshold amounts and the review that might otherwise occur.

(g) Signature and certification are required as follows.
Figure: 28 TAC §7.211(g)

§7.212. Form D.

(a) Prior notice of a transaction. Prior notice of a transaction is required as follows.
Figure: 28 TAC §7.212(a)

(b) Identity of parties to transaction. Furnish the following information for each of the parties to the transaction:

(1) name;

(2) home office address;

(3) principal executive office address;

(4) the organizational structure, i.e. corporation, partnership, individual, trust, etc.;

(5) a description of the nature of the parties' business operations;

(6) relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties;

(7) where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

(c) Description of the transaction. Furnish the following information for each transaction for which notice is given:

(1) a statement identifying the statute under which the transaction is filed;

(2) a statement of the nature of the transaction and the reasons for entering into or changing the transaction;

(3) a statement of how the transaction complies with §823.101; and

(4) the proposed effective date of the transaction; and

(5) the financial impact of the transaction on the domestic insurer.

(d) Sales, purchases, exchanges, loans, extensions of credit, guarantees or investments.

(1) Furnish a brief description of the amount and source of funds, securities, property, or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements, and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost, and its fair market value, together with an explanation of the basis for evaluation.

(2) If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount the insurer will be obligated to make available under the loan, extension of credit, or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

(3) If the transaction involves an investment, guarantee, or other arrangement, state the period during which the investment, guarantee, or other arrangement will remain in effect, together with any provisions for extensions or renewals of the investments, guarantees, or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

(e) Loans or extensions of credit to a non-affiliate. If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding through which the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase the assets of, or make investments in, any affiliate of the insurer making loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of, or make investments in any affiliate. Describe the amount and source of funds, securities, property, or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction on the insurer's surplus.

(f) Reinsurance. If the transaction is a reinsurance agreement or modification or a reinsurance pooling agreement or modification described in the Insurance Code §823.103(a)(2), furnish a description of the known or estimated amount of liability to be ceded or assumed in each calendar year, the period the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

(g) Management agreements, service agreements, and cost sharing arrangements.

(1) For management and service agreements, furnish:

(A) a brief description of the managerial responsibilities or services to be performed;

(B) a brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

(2) For cost-sharing arrangements, furnish:

(A) a brief description of the purpose of the agreement;

(B) a description of the period of time during which the agreement is to be in effect;

(C) a brief description of each party's expenses or costs covered by the agreement;

(D) a brief description of the accounting basis to be used in calculating each party's costs under the agreement;

(E) a brief statement as to the effect of the transaction upon the insurer's policyholder surplus;

(F) a statement regarding the cost allocation methods specifying whether proposed charges are cost or market based. If market based, include the rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable; and

(G) a statement regarding compliance with the NAIC Accounting Practices and Procedure Manual regarding expense allocation.

(h) Signature and certification. Signature and certification are required as follows.
Figure: 28 TAC §7.212(h)

§7.213. Form E.

(a) Notice of Ordinary and Extraordinary Dividends and Other Distributions. Complete subsection (b) of this section for an Ordinary Dividend pursuant to §7.203(o) of this title (relating to Registration of Insurers) and complete subsections (b) and (c) of this section for an Extraordinary Dividend pursuant to §7.204(d) of this title (relating to Transactions Subject to Prior Notice).
Figure: 28 TAC §7.213(a)

(b) Dividend or distribution.

(1) Name of insurer.

(2) Address of insurer.

(3) Declaration of dividend:

(A) Amount of declared dividend or distribution: $

(B) Recipient of declared dividend or distribution.

(C) Declaration date.

(D) Proposed payment date.

(4) The dividend or distribution is in compliance with the Act and is indicated in subparagraphs (A) and (B) of this paragraph:

(A) Calculation.

(i) Amount of current dividend or distribution: $

(ii) Dividends or distributions declared during preceding 12 months, excluding current dividend or distribution but including declaration date, payment date, type of dividend or distribution, and amount: $

(iii) Total of clauses (i) and (ii) of this subparagraph: $

(iv) Surplus as regards policyholders (net worth for HMO) as of preceding December 31: $

(I) 10 percent of this clause for Life, P&C, and HMO: $

(II) 20 percent of this clause for Title: $

(v) Operating income:

(I) Net gain from operations before realized capital gains as of preceding December 31 for Life, Title and HMO: $

(II) Net income as of preceding December 31 for P&C: $

(vi) Greater of calculated surplus from clause (iv) of this subparagraph or the operating income from clause (v) of this subparagraph: $

(B) If the amount from subparagraph (A)(iii) of this paragraph exceeds the amount from subparagraph (A)(vi) of this paragraph, then provide the information required by subsection (c) of this section relating to extraordinary dividend and distribution.

(5) Earned surplus, defined as the unassigned funds (surplus) less unrealized capital gains, must be greater than the current dividend or distribution amount stated in paragraph (4)(A)(i) of this subsection. Earned surplus must be calculated as of the most recent financial information available.

(6) Supporting documentation of the balance sheet, summary of operations including capital and surplus account, and cash flow statement of the most recently filed monthly, quarterly, or annual statement, together with documentation to support the standards specified in the Insurance Code §823.008.

(7) Additional requirements are as follows:

(A) Identify property, including bank accounts, to be used to pay the dividend or distribution or to be converted to pay the dividend or distribution.

(B) Provide Insurer's ratio of net written premium to capital and surplus for 12 months as of the end of the last calendar year. In addition, provide the same ratio after deducting the total amount of the present dividend or distribution.

(C) Identify and describe any reason (other than general business trends) that earnings are expected to decrease.

(D) Identify any investment or contribution by the Insurer to subsidiaries made since the last calendar year or to be made in the immediate future.

(E) Give a brief statement as to the effect upon the insurer's capital and surplus or HMO's net worth and the reasonableness of remaining capital and surplus or net worth after payment of dividend or distribution in relation to the Insurer's outstanding liabilities and the adequacy of capital and surplus or net worth relative to the Insurer's financial needs.

(8) Certification that there has been no material adverse change in the financial condition of the Insurer since the date of the most recent financial statement filed with the department and the payment of the dividend or distribution does not adversely affect the interest of policyholders.

(9) Certification that the declaration or payment of the dividend or distribution does not violate any of the provisions of the Insurance Code Chapter 403 or §841.253, as applicable, and that the amount of the dividend or distribution declared was calculated based on the amount of cash and the current fair market value of any other property to be paid or distributed.

(10) Signature.
Figure: 28 TAC §7.213(b)(10)

(c) Extraordinary Dividend and Distribution.

(1) State purpose of dividend or distribution.

(2) Furnish a copy of directors' resolution declaring dividend and any shareholders resolution supporting such declaration are to be attached to this form.

(3) Effect of declaration.

(A) Give the total amount of dividend or distribution in dollars when so expressed, or if declared in some other terms, the approximate dollar value and identify the exact property in which the dividend or distribution is payable if not cash (include method of valuing the property other than cash).

(B) Explain any difference in treatment and basis with regard to any share of issued and outstanding stock that will not be treated equally in distribution of dividend, excluding treatment of classes of stock.

(C) Explain basis concerning the different treatment in distribution of dividend given by class of stock.

(D) Give number of shares by class to whom proposed dividend is payable, the dividend per share of each class and total amount of dividend by class of stock.

(E) By class of stock, give total amount of each dividend declared, the amount payable per share, and the date of declaration for the five calendar years preceding this notice.

(F) Give the net gain or loss from operations after dividends to policyholders and federal income taxes, excluding capital gains and losses of the Insurer for each of the last five calendar years as reported in the Insurer's annual statement to the department.

(4) Provide a balance sheet, income statement, and cash flow statement for the interim period from the last annual statement to the end of the month preceding the month in which this application is submitted. Include pro forma columns for the dividend or distribution, post-payment numbers, and projected numbers for the current year end and the following year end.

(5) Provide the National Association of Insurance Commissioners authorized control level Risk Based Capital Ratio before and after dividend or distribution and projected for year end and the following year end.

(6) Provide a discussion of any recent operational changes and anticipated changes to the business plan, including an increase or reduction of premium volume, changes in product mix and markets impacting underwriting and expense ratios, reinsurance changes impacting risk retention, and changes in investment strategy impacting the portfolio.

(7) Explain any restrictions on the volume of the Insurer's underwritings within the last year or in the immediate future that did not previously exist.

(8) Explain any limitations and reasons for limitations established for geographical underwriting within the last year or in immediate future that did not previously exist.

(9) Describe the existing reinsurance program of Insurer, including limits of retention.

(10) Identify and describe any deviation of more than 10 percent in value of any loans or investments held by Insurer (other than replacement of maturing securities with comparable securities) from that disclosed in your last annual statement.

(11) Signature and certification of the following form is required:
Figure: 28 TAC §7.213(c)(11)

§7.214. Form F.

(a) Enterprise Risk Report is required as follows.
Figure: 28 TAC §7.214(a)

(b) The registrant/applicant, to the best of its knowledge and belief, must provide information regarding the following areas that could produce enterprise risk as defined in §7.202 of this title (relating to Definitions), provided such information is not disclosed in the Insurance Holding Company System Annual Registration Statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

(1) any material developments regarding strategy, internal audit findings, compliance, or risk management affecting the insurance holding company system;

(2) acquisition or disposal of insurance entities and reallocation of existing financial or insurance entities within the insurance holding company system;

(3) any changes of shareholders of the insurance holding company system exceeding 10 percent or more of voting securities;

(4) developments in various investigations, regulatory activities, or litigation that may have a significant bearing or impact on the insurance holding company system;

(5) business plan of the insurance holding company system and summarized strategies for the next 12 months;

(6) identification of material concerns of the insurance holding company system raised by supervisory college, if any, in last year;

(7) identification of insurance holding company system capital resources and material distribution patterns;

(8) identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook);

(9) information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should the guarantees be called; and

(10) identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

(c) The registrant/applicant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the registrant/applicant includes specific references to those areas listed pursuant to subsection (b) of this section for which the form provides responsive information. If the registrant/applicant is not domiciled in the U.S., it may attach its most recent public audited financial statement filed in its country of domicile, provided the registrant/applicant includes specific references to those areas listed pursuant to subsection (b) of this section for which the financial statement provides responsive information.

(d) If the registrant/applicant has not disclosed any information pursuant to subsection (b) of this section, the registrant/applicant must include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to subsection (b) of this section.

(e) Pursuant to Section 18 of Acts 2011, 82nd Leg., ch. 922 (S.B. 1431), the commissioner of insurance has determined that the National Association of Insurance Commissioners has completed an enterprise risk form and has proposed a master confidentiality agreement.

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

Filed with the Office of the Secretary of State on December 17, 2012.

TRD-201206505
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 463-6326

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28 TAC §§7.211 - 7.213

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

INTRODUCTION. The Texas Department of Insurance proposes the repeal of 28 TAC §§7.211 - 7.213, concerning Form C, disclaimer of control or affiliation filed with TDI; Form D, notice of declaration of extraordinary dividend; and Form E, statement regarding the exemption from approval of the acquisition of control of a domestic insurer, respectively. The repeal of these sections is necessary to implement statutory changes from Senate Bills 1283 and 1284 (79th Leg., 2005), 1542 (80th Leg., 2007), and 1431 (82nd Leg., 2011); adopt the National Association of Insurance Commissioners (NAIC) model regulation forms, as applicable; and delete obsolete forms.

TDI proposes the repeal of §7.211, Form C, concerning disclaimer filings. The disclaimer content is relocated in narrative format to proposed §7.203(m) to be consistent with NAIC disclaimer language, and is published in this issue of the *Texas Register.* The repeal is necessary to adopt NAIC Form C, summary of material changes to a registration statement, and implement statutory changes from Insurance Code §823.055. TDI proposes the repeal of §7.212, Form D, concerning notice of declaration of extraordinary dividend, and relocates the information to proposed §7.213, Form E, notice of ordinary and extraordinary dividends and distributions. The repeal is necessary to adopt NAIC Form D, prior notice of a transaction, and implement statutory changes from Insurance Code §§823.101, 823.102 and 823.103. TDI proposes the repeal of §7.213, Form E, concerning the exemption from approval of the acquisition of control of a domestic insurer, because the exemption form is obsolete. The exemption remains pursuant to Insurance Code §823.164. Proposed §7.213, Form E, includes notice of ordinary and extraordinary dividends and other distributions, which incorporates ordinary dividends from the HC Dividend form on the TDI website and extraordinary dividends from Form D. In conjunction with this proposed repeal, TDI is proposing new §§7.211 - 7.213, also published in this issue of the *Texas Register.*

FISCAL NOTE. Danny Saenz, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of administration and enforcement of the repealed sections will be to adopt NAIC model regulation forms, as applicable, and eliminate obsolete regulation forms. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the department has determined that this proposed repeal will not have an adverse economic effect on small or micro business carriers because it eliminates obsolete regulation forms and adopts NAIC model regulation forms, as applicable. Therefore, in accord with the Government Code §2006.002(c), the department is not required to prepare an economic impact statement or 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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on January 28, 2012, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Angel Garrett, Assistant Chief Analyst, Financial Analysis, Mail Code 303-1A,

Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the adoption of the proposed repeal in a public hearing under Docket No. 2750 scheduled for January 24, 2013 at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Written and oral comments presented at the hearing will be considered. The notice to consider the adoption of the proposed amendments and new sections is published in this issue of the *Texas Register.*

STATUTORY AUTHORITY. Repeal of §§7.211 - 7.213 is proposed pursuant to the Insurance Code §§823.012(a), 823.055(c), 823.059(c), 823.101(b-1), 823.103(a)(4), 823.154(a)(3), 36.001, and 36.004. Article 823.012(a) provides that the commissioner may, after notice and opportunity for all interested persons to be heard, adopt rules and issue orders to implement this chapter, including the conducting of business and proceedings under this chapter. Section 823.055(c) provides that an insurer required to file an annual registration statement shall also furnish a summary of material changes from the prior year's annual registration statement as specified by the commissioner by rule. Section 823.059(c) provides that the commissioner, by rule or order, may exempt an insurer, information, or a transaction from the application of this subchapter. Section 823.101(b-1) provides that an agreement, including an agreement for cost-sharing, services, or management, must include all provisions required by rule of the commissioner. Section 823.103(a)(4) applies only to any material transaction between a domestic insurer and any person in the insurer's holding company system that is specified by rule and that the commissioner determines may adversely affect the interests of the insurer's policyholders or of the public, including an amendment or modification of an agreement previously filed under this section. Section 823.154(a)(3) provides that if the person is initiating a divestiture of control, the divesting person shall file with the commissioner a notice of divestiture on a form adopted by the National Association of Insurance Commissioners or adopted by the commissioner by rule. Section 843.051(g) provides that the commissioner may adopt rules as necessary to implement this subsection in a way that reflects the nature of health maintenance organizations, health care plans, or evidences of coverage. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state. Section 36.004 provides that except as provided by Section 36.005, the department may not require an insurer to comply with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners, including a rule, regulation, directive, or standard relating to policy reserves, unless application of the rule, regulation, directive, or standard is expressly authorized by statute and approved by the commissioner.

CROSS REFERENCE TO STATUTE. The proposed repeal affects regulation pursuant to the following statutes:

§7.211 - Insurance Code §823.010 and §823.055

§7.212 - Insurance Code §§403.001, 403.051, 403.052, 403.053, 823.008, 823.012, 823.053, 823.101, 823.102, 823.103, and 823.107

§7.213 - Insurance Code §§403.001, 403.051, 403.052, 403.053, 823.008, 823.012, 823.053, 823.107, and 823.164

§7.211. Form C.
§7.212. Form D.
§7.213. Form E.

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 December 17, 2012.

TRD-201206504
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 463-6326

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.324

The Comptroller of Public Accounts proposes an amendment to §3.324, concerning oil, gas, and related well service. Subsections (b)(5) and (e)(2) and (3) are amended to reflect the new titles of §3.294 and §3.357, which are referenced therein. Subsection (h) is amended to clarify the comptroller's policy that allows a well operator to claim an exemption from sales and use tax on the purchase of certain oil soluble chemicals for injection and CO2 for stimulation and enhanced oil recovery provided it issues a properly completed exemption certificate in lieu of paying the tax on the chemicals or the CO2. Other amendments to subsection (h) are made for clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the policy to certain exemptions from the sales and use tax. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The section implements Tax Code, §151.0101.

§3.324. Oil, Gas, and Related Well Service.

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

(1) Oil, gas, and related well service--An activity performed for others for a consideration or compensation at any well site including an oil, gas, water disposal, or injection well.

(2) Taxable services--The total charge to repair, restore, remodel, or maintain tangible personal property or to repair, remodel, or restore improvements to real property at a lease site. Taxable services also include, but are not limited to, real property services such as surveying and structural pest control at the lease site.

(3) Nontaxable services--The labor to start or stimulate production or the labor to work on the formation outside the well. Pumping the product is not considered to be stimulating production.

(b) Responsibilities of those providing a nontaxable well service.

(1) The labor to perform those services subject to the 2.42% oil well service tax imposed under [~~the~~] Tax Code, Chapter 191, is not taxable under [~~the~~] Tax Code, Chapter 151.

(2) Work performed inside the wellbore for the purpose of starting initial production or increasing production by working on the formation is not taxable. The following activities are not taxable.

(A) Fracturing (frac job)--Work done on a well using high pressure pumps to stimulate production by increasing the permeability of the producing formation. Under extremely high hydraulic pressure a fluid (water, oil, alcohol, hydrochloric acid, liquefied petroleum gas, foam) is pumped down through the tubing and forced into perforations in the casing. The fluid enters the producing formation and parts or fractures it. Sand, aluminum pellets, glass beads, or similar materials are carried in suspension into the fractures. These are propping agents. When pressure is released at the surface the frac fluid returns to the wellbore and the fractures partially close on the proppants leaving channels for oil or gas to flow through to the wellbore. The well is then ready to complete or put back on production. (See [~~the~~] Tax Code, Chapter 191, relating to the 2.42% well servicing tax.)

(B) Perforating--A special service done by lowering into the well a perforating gun that fires electrically detonated bullets or shaped charges. The gun is controlled from the surface. The casing and cement wall are pierced to provide holes through which the contents of the formation may enter.

(C) Squeeze cement--Cementing trucks with high pressure pumps force cement slurry to a specified point in the well to cause seals at the points of squeeze. It is a secondary cementing method that is used to isolate a producing formation or seal off water. (See subsection (d)(5) of this section for the tax responsibilities to repair the casing string.)

(D) Workover--To perform one or more remedial operations when the formation has declined in production or ceased to produce, with the hope of restoring or increasing production. Workover operations can include deepening or plugging back.

(E) Acidizing--The treatment of formations by chemical reaction with acid in order to increase production. Hydrochloric or other acid is pumped into the formation under pressure causing the pore space and permeability to increase. The acid may be held under pressure for a period of time before the well is put back on production. Chemical inhibitors are combined with the acid to prevent corrosion of the pipe. (See [~~the~~] Tax Code, Chapter 191, relating to 2.42% well servicing tax.)

(F) Logging--A device which is run into the well to record certain electrical or radioactive characteristics of the formations. The purpose of the well log is to locate, identify, and evaluate the various formations present. (See [~~the~~] Tax Code, Chapter 191, relating to 2.42% well servicing tax.)

(G) Drilling deeper--A workover operation where the well is deepened in either the existing or another producing formation.

(H) Plug back--A workover operation placing cement in the bottom of a well for the purpose of excluding bottom water, sidetracking or producing from a formation already drilled through. A mechanical plug can be set by wireline, tubing, or drill pipe.

(I) Completion--The act of bringing a well to productive status. Numerous services are used to complete a well, including running casing, cementing, logging, perforating, fracturing, acidizing, swabbing, and other special services depending on characteristics of the formation.

(J) Plug and abandon--To set cement plugs into a well preparatory to abandonment.

(K) Pulling or resetting casing liner--A liner is any string of casing whose top is located below the surface. Liners are set for the purpose of admitting production to the bottom of the well. Pulling or resetting a liner involves moving this casing up or down the hole or pulling it out of the well.

(L) Installing a casing liner--This service is similar to that described in subparagraph (K) of this paragraph except that it involves the initial installation of the casing to the desired depth for producing the well.

(M) Drilling out a plug--The removal by drilling of the cement set as a plug in the wellbore.

(N) Putting on artificial lift (new installation)--If a well will not produce by natural energy, a method is used to lift the oil to the surface. Artificial lift systems include rod pumping, gas lifting, hydraulic pumping, and centrifugal pumping.

(O) Running a bottom hole bomb--The pressure in a well at a point opposite the producing formation is recorded by a bottom hole pressure bomb, a steel container that houses a precision pressure gauge. The bomb is lowered on a wireline.

(P) Swabbing--Operating a rubber faced cylinder up and down on a wireline to bring fluids to the surface when the well will not flow naturally. In the event an oil well does not flow after being swabbed it is necessary then to install artificial lift equipment.

(Q) Jetting--Introduction of nitrogen or other inert gases into the wellbore to enhance production or recovery. The gases have no beneficial effect on downhole equipment.

(R) Gravel packing--The installation of a screen to prevent the intrusion of formation sand into the wellbore.

(S) Hot oil treatment of formation--If a hot oil unit is used for the purpose of treating the formation, it will be considered a nontaxable service. The invoice must clearly identify the purpose of the treatment or it will be considered to be a treatment on the wellbore and taxable.

(3) The provider of a nontaxable service should pay sales tax on any machinery or equipment purchased or rented to provide the service and on any materials (except cement) used, consumed, or expended in the well.

(4) The provider of a nontaxable service may not collect sales tax from customers on any portion of the charge for service. If the provider of the service wishes to be reimbursed for sales tax paid on the purchase price of provided materials used, the tax must be included in a single charge for materials. The tax may not be separately stated.

(5) If the provider of a nontaxable service sells any materials to a customer that were not used in the well servicing, sales tax must be collected on the sales price. Any machinery or equipment transferred to the customer will be taxable to the customer if sold or rented without an operator. Those items listed on the well service invoice as "rentals" which are so called merely because of the carry-over of the term from past industry practice are not rentals as defined in §3.294 of this title (relating to Rental and Lease of Tangible Personal Property [~~Rentals and Leases of Taxable Items~~]).

(6) Direct payment permit holders should not issue direct payment exemption certificates to persons providing nontaxable services.

(7) When a direct payment permit holder is doing business with a person who may be selling taxable items as well as nontaxable services, the direct payment exemption certificate must indicate that it does not cover any nontaxable services that the servicer may provide. The issuance of a specific direct payment exemption certificate will be considered evidence of the direct payment permit holder's intent to purchase any tangible personal property transferred by the service provider rather than the purchase of a nontaxable service.

(c) Sale or rental versus service.

(1) If a company merely provides equipment and a supervisor, the presumption will be that the company is not providing services but selling or renting equipment. The charge for the supervisor's time is part of the tax base as an expense connected with the sale or rental. Mileage charges are also taxable. Equipment being incorporated into the wellbore, i.e., hanger liners, packers, plugs, etc., may be purchased tax free by issuing a resale certificate. The invoice and/or back-up work tickets must clearly indicate what is occurring.

(2) A service company must pay tax on tools and equipment used to provide a service. If a service company also rents the tools to others, sales tax must be collected on the rental price. A service company that issues a resale certificate for tools which it will rent to others must keep those tools separate from those which it uses to perform services.

(d) Responsibilities of those providing taxable services.

(1) Persons who provide taxable services must collect sales tax from their customers on the total charge (materials and labor) for the service. Charges for mileage, trip charges, standby charges, etc., connected with taxable services will also be taxable. The following activities by service companies are taxable.

(A) Pump change--Replacing bottom hole pump.

(B) Rod/tubing job--Pulling sucker rods and/or tubing out of and running it back in the well. See subsection (e)(1) [~~(d)(1)~~] of this section.

(C) Fishing for rods or tubing--When sucker rods break or part, or tubing parts, a fishing tool is run to recover the parted rods or tubing.

(D) Tubing leak--The small diameter pipe in a well that serves as conduit for the oil and gas may become worn or develop a leak. Tubing is pulled and tubing or collar replaced.

(E) Change packer or anchor--A packer is a device used to block communication through the annular space between two strings of pipe. Production packers may be retrievable or permanent. An anchor is a device that secures or fastens downhole equipment. Rods and/or tubing may be pulled to change a packer or anchor.

(F) Hot oil or water treatment of casing, tubing or flow lines--The treatment of a producing well with heated oil or water so as to melt accumulated paraffin in the annulus, tubing or surface piping (flow line) through which the oil travels from the well to storage. Special truck-mounted hot oil units heat the oil or water and pump it down the well or through the flow lines.

(2) The provider of a taxable service should pay sales tax on any machinery or equipment purchased or rented to provide the service and on any materials (except cement) used or consumed in providing the service which do not become a part of the items inside the wellbore.

(3) Those items of equipment which become a component part of the items inside the wellbore are considered to be sold as a part of the taxable service and may be purchased tax free by the provider of the taxable service. The provider of the taxable service will collect sales tax from the customer on the total charge (materials and labor) for the taxable service.

(4) On occasion, down hole services described in this subsection [~~(d) of this section~~] may be performed in order to facilitate a nontaxable service, e.g., pull tubing to perform workover. This will render the taxable service nontaxable. Any equipment incorporated into the well, in this situation, will still be considered as sold to the operator; and the operator will owe tax on the amount charged for the equipment.

(5) The labor to repair, remodel, or restore an item of real property is a taxable service. Tax is due on the total amount charged for the taxable service. The following activities are taxable.

(A) Squeeze cement--Cementing trucks with high pressure pumps force cement slurry to a specified point in the well to cause seals at the points of squeeze. It is a secondary cementing method used to repair casing leaks or damage;

(B) Pulling or resetting casing liner--Pulling or resetting a liner for the purpose of repairing the casing string.

(e) Work crews.

(1) The labor charge by persons who prepare a well for servicing will be taxable or not taxable depending on what is actually done by the provider of the service. For example, a crew removing rods so that a pump may be repaired would be providing taxable labor. A crew removing tubing so that a workover could be accomplished would not be providing taxable labor.

(2) General maintenance around a well site may be either maintenance on tangible personal property, a real property service (§3.356 of this title (relating to Real Property Service)), or a repair of an improvement to real property (§3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance [~~Real Property Repair and Remodeling~~])) depending on the service provided. Examples of maintenance of tangible personal property include service to tanks with a capacity of 500 barrels or less, flow lines, whether above or below ground, pumps, and gauges. Examples of real property services would include structural pest control by a licensed exterminator. An example of a repair or restoration of real property would be sandblasting and repainting 1000 barrel tanks. Examples of nontaxable services performed at well sites include cutting weeds, covering oil spills and mowing grass.

(3) All welding in the field will be presumed to be taxable unless billings clearly indicate the labor was performed as part of new

construction as defined in §3.357 of this title [(~~relating to Real Property Repair and Remodeling~~)] or third-party installation (initial only) of customer-owned equipment.

(f) Lost or damaged items.

(1) Any charges by the service company for items lost or damaged beyond repair while providing the well service will not be considered a sale of such items but a reimbursement of cost by the customer. The transaction should not be labeled as a "sale" on the invoice. The service company may be reimbursed for the sales or use tax it paid by including the sales or use tax on the invoice to the customer as a part of the charge for such item. The reimbursement of sales or use tax may not be separately stated as tax.

(2) When a service company actually rents items to a customer, their charges are taxable. This includes any charges for damage waiver or repair to the items after their return.

(g) All process licenses are intangible items, and the fees paid by the service company to the holder of the patents are nontaxable where there is a service only.

(h) Chemicals, brine water, potassium chloride (KCL), CO2--sales versus service.

(1) Because maintenance to tangible personal property is taxable, the injection of maintenance-type chemicals such as corrosion inhibitors, bactericides, etc., into the wellbore is considered a taxable service. All charges associated with the injection are taxable including chemicals, mileage, standby, pump truck, and labor. The well operator may purchase certain oil soluble chemicals used to maintain the wellbore exempt from tax, if the chemicals are purchased separately and provided the well operator issues an exemption certificate in lieu of tax on the charge for the chemicals. [~~Since certain chemicals are oil soluble and remain in the product flow after injection, the well operator may purchase those chemicals separately from the service provider and issue a resale certificate in lieu of tax on the charge for the chemicals. All charges associated with the injection would be taxable including mileage, standby, pump truck, and labor.~~]

(2) The injection of chemicals to stimulate production or remove impurities from the product being removed such as acid, emulsifiers, or nitrogen is a nontaxable service. The service company is the consumer of all chemicals pumped down hole and must pay tax at the time of purchase.

(3) Excluding the materials purchased to provide nontaxable well services identified in subsection (b) of this section, certain oil soluble chemicals and CO2 used to stimulate production may be purchased, exempt from tax, by the well operator for injection provided the well operator issues a properly completed exemption certificate in lieu of paying the tax on the chemicals or the CO2.

(4) [~~(3)~~] Kill charges will be taxable or nontaxable depending on the overall purpose. All kill charges will be presumed taxable until the contrary is established. The service company should bill tax if it is not known at the time of billing what the overall purpose was. The operator must then pay the tax or provide either a direct payment exemption certificate or a statement that the purpose was to facilitate a nontaxable service. The statement must be definite in the purpose claimed. Statements such as "to stimulate production" are insufficient and will be disallowed.

(5) [~~(4)~~] A service company will be considered to be providing services if they do the actual injection into the well. Delivery into a frac tank or other storage unit will be considered a sale of tangible personal property. If it is unclear from the invoice, the presumption will be that if a high pressure pump truck is used, a service has occurred; if a vacuum truck is used to deliver the fluids or CO2, then a sale of tangible personal property has occurred. The service company may purchase all components of the fluids tax free when making a sale or providing a taxable service.

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 December 17, 2012.

TRD-201206520
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER K. INTERAGENCY AGREEMENTS

37 TAC §15.171

The Texas Department of Public Safety (the department) proposes new §15.171, concerning Identifying Document for Offenders/Memorandum of Understanding. The proposed rule is in accordance with Texas Government Code, §501.0165, and necessary to adopt a memorandum of understanding with the Texas Department of Criminal Justice (TDCJ) and Department of State Health Services (DSHS) for the issuance of personal identification certificates to inmates preparing for release.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that persons who are released from TDCJ facilities will possess identification certificates to assist in successful reintegration in to the community.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and

that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be submitted to Janie Smith, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dsp.texas.gov. Comments must be received no later than 30 days from the date of publication of this proposal.

The new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and §501.0165(c) which authorizes the department by rule to adopt a memorandum of understanding with TDCJ and DSHS for the issuance of personal identification certificates to inmates preparing for release.

Texas Government Code, §411.004(3) and §501.0165 are affected by this proposal.

§15.171. Identifying Document for Offenders/Memorandum of Understanding.

(a) The Texas Department of Public Safety (DPS) adopts a memorandum of understanding with the Texas Department of Criminal Justice (TDCJ) and Department of State Health Services (DSHS) concerning the respective responsibilities of DPS, TDCJ and DSHS in implementing the issuance of personal identification certificates to qualified inmates preparing for release.

(b) The memorandum of understanding is required by Texas Government Code, §501.0165.

(c) Copies of the memorandum of understanding are filed with the TDCJ, 8610 Shoal Creek Boulevard, Austin, Texas 78758; DSHS, 1100 West 49th Street, Austin, Texas 78756; and with DPS, 5805 N. Lamar Boulevard, Austin, Texas 78752 and may be reviewed during regular business hours.

Figure: 37 TAC §15.171(c)

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 December 12, 2012.

TRD-201206416
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 424-5848

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CHAPTER 23. VEHICLE INSPECTION

SUBCHAPTER A. VEHICLE INSPECTION STATION LICENSING

37 TAC §§23.1 - 23.15, 23.18, 23.19

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

The Texas Department of Public Safety (the department) proposes the repeal of §§23.1 - 23.15, 23.18, and 23.19, concerning Vehicle Inspection Station Licensing. This subchapter is repealed to enable the proposal of a new Subchapter A for the purpose of reorganizing and consolidating the rules governing license processing and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to ensure to the public greater compliance by vehicle inspectors and inspection stations with the statutes and regulations pertaining to the safety and emissions inspections of motor vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than 30 days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Texas Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.1. New Applications.

§23.2. General Space Requirements.

§23.3. Specific Requirements for Public, Fleet, and Governmental Vehicle Inspection Stations.

§23.4. Station Endorsements.

§23.5. Specific Requirements for Vehicle Inspection Stations with Trailer Endorsement.

§23.6. Specific Requirements for Vehicle Inspection Stations with Motorcycle Endorsement.

§23.7. Specific Requirements for Vehicle Inspection Stations with Commercial Endorsements.

§23.8. Equipment Requirements for All Classes of Vehicle Inspection Stations.

§23.9. Manpower.

§23.10. Inspection Station Display Area.

§23.11. Vehicle Inspection Station Sign.

§23.12. Expiration of Appointment during Suspension.

§23.13. Reissue of Inspection Station Certificate of Appointment after Suspension.

§23.14. Vehicle Inspection Station Certificate of Appointment Renewal.

§23.15. Inspection Station and Certified Inspector Denial, Revocation, Suspensions, and Administrative Hearings.

§23.18. Texas Automated Vehicle Inspection System (TAVIS) Access.

§23.19. Additional Texas Automated Vehicle Inspection System (TAVIS) Station Interface Equipment.

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 December 12, 2012.

TRD-201206423
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 424-5848

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SUBCHAPTER B. GENERAL INSPECTION REQUIREMENTS

37 TAC §§23.21 - 23.29

(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 Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Public Safety (the department) proposes the repeal of §§23.21 - 23.29, concerning General Inspection Requirements. This subchapter is repealed to enable the proposal of a new Subchapter B for the purpose of reorganizing and consolidating the rules governing vehicle inspection station facilities, equipment, and the conduct of vehicle inspectors and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to ensure to the public greater compliance by vehicle inspectors and vehicle inspection stations with the statutes and regulations pertaining to the safety and emissions inspections of motor vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than 30 days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Texas Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.21. Issuance of Inspection Certificates.

§23.22. Motor Vehicles with Windshields: Cars, Trucks, Buses, and School Buses.

§23.23. Instructions for Applying Inspection Certificates: Cars, Trucks, Buses, and School Buses.

§23.24. Motor Vehicles without Windshields.

§23.25. Inspection Station Responsibilities for Safeguarding Certificates; Financial Responsibility for Inspection Certificates Received and Subsequently Damaged, Rendered Unusable or Received and Subsequently Stolen or Lost; and for State Authorized Vendor Property.

§23.26. Repairs.

§23.27. Specific Requirements.

§23.28. Additional Information and Requirements.

§23.29. Investigation of Complaints and Violations.

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 December 12, 2012.

TRD-201206424
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 424-5848

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SUBCHAPTER C. INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

37 TAC §23.41, §23.42

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

The Texas Department of Public Safety (the department) proposes the repeal of §23.41 and §23.42, concerning Inspection Items, Procedures, and Requirements. This subchapter is repealed to enable the proposal of new Subchapter C for the purpose of reorganizing and consolidating the rules governing inspection station operations and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to ensure to the public greater compliance by vehicle inspectors and vehicle inspection stations with the statutes and regulations pertaining to the safety and emissions inspections of motor vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than 30 days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Texas Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.41. Inspection Items.

§23.42. Inspection of Sunscreening Devices (Glass Tinting) by Official Vehicle Inspection Stations.

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 December 12, 2012.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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SUBCHAPTER D. VEHICLE INSPECTION RECORDS

37 TAC §§23.51 - 23.53

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

The Texas Department of Public Safety (the department) proposes the repeal of §§23.51 - 23.53, concerning Vehicle Inspection Records. This subchapter is repealed to enable the proposal of new Subchapter D for the purpose of reorganizing and consolidating the rules governing inspection items, procedures, and requirements and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is

in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to ensure to the public greater compliance by vehicle inspectors and vehicle inspection stations with the statutes and regulations pertaining to the safety and emissions inspections of motor vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than 30 days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Texas Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.51. Retention of Records.
§23.52. Vehicle Inspection Forms.
§23.53. Inspection Station Report Form, VI-8.

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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D. Phillip Adkins
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SUBCHAPTER E. CERTIFICATION OF INSPECTORS

37 TAC §23.61, §23.62

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

The Texas Department of Public Safety (the department) proposes the repeal of §23.61 and §23.62, concerning Certification of Inspectors. This subchapter is repealed to enable the adoption of new Subchapter E for the purpose of reorganizing and consolidating the rules governing the Vehicle Emissions Inspection and Maintenance Program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to ensure to the public greater compliance by vehicle inspectors and vehicle inspection stations with the statutes and regulations pertaining to the safety and emissions inspections of motor vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than 30 days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which

authorizes the Texas Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.61. Procedures for Certification.

§23.62. Certification of External Inspector Training Schools.

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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D. Phillip Adkins
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SUBCHAPTER F. VEHICLE INSPECTION STATION OPERATION

37 TAC §§23.71 - 23.81

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

The Texas Department of Public Safety (the department) proposes the repeal of §§23.71 - 23.81, concerning Vehicle Inspection Station Operation. This subchapter is repealed to enable the proposal of new Subchapter F for the purpose of reorganizing and consolidating the rules governing violations and administrative penalties and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to ensure to the public greater compliance by vehicle inspectors and vehicle inspection stations with the statutes and regulations pertaining to the safety and emissions inspections of motor vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than 30 days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Texas Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.71. Certificate of Appointment.
§23.72. Procedure Chart.
§23.73. Inspection Fees.
§23.74. Refunds of Ununsed Inspection Certificates.
§23.75. Change of Location, Name, or Ownership.
§23.76. Going Out of Business.
§23.77. Vehicle Inspection Station Cancellations.
§23.78. Instructions and Guidelines.
§23.79. Handling Insufficient Funds Checks.
§23.80. Out-of-State Vehicle Identification Number Verification.
§23.81. Inspection Station Acquisition of Certificates Using Texas Automated Vehicle Inspection System (TAVIS).

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

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SUBCHAPTER G. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM

37 TAC §§23.93 - 23.97

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

The Texas Department of Public Safety (the department) proposes the repeal of §§23.93 - 23.97, concerning Vehicle Emissions Inspection and Maintenance Program. This subchapter is repealed to enable the proposal of new Subchapter E, for the purpose of reorganizing and consolidating the rules governing the Vehicle Emissions Inspection and Maintenance Program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to ensure to the public greater compliance by vehicle inspectors and vehicle inspection stations with the statutes and regulations pertaining to the safety and emissions inspections of motor vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than 30 days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Texas Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.93. Vehicle Emissions Inspection Requirements.

§23.94. Alternate Vehicle Emission Testing.

§23.95. Waiver for Low Volume Emissions Inspection Stations.

§23.96. Emissions Analyzer Access/Identification Card.

§23.97. Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

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

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SUBCHAPTER A. VEHICLE INSPECTION STATION AND VEHICLE INSPECTOR CERTIFICATION

37 TAC §§23.1 - 23.6

The Texas Department of Public Safety (the department) proposes new §§23.1 - 23.6, concerning Vehicle Inspection Station and Vehicle Inspector Certification. These new sections are filed simultaneously with the repeal of current Subchapter A, concerning Vehicle Inspection Station Licensing. The proposed new §§23.1 - 23.6 reorganize and consolidate the rules governing vehicle inspection station and vehicle inspector certification process and generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by vehicle inspection stations and vehicle inspectors with the statutes and regulations pertaining to the safety and emissions inspections of motor vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than 30 days from the date of publication of this proposal.

The new sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Texas Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.1. New or Renewal Vehicle Inspection Station Applications.

(a) Applicants for new or renewal vehicle inspection station certification must apply in a manner prescribed by the department.

(b) By submitting a new or renewal vehicle inspection station application form, the applicant agrees to allow the department to conduct background checks as authorized by law.

(c) A new or renewal vehicle inspection station application must include, but is not limited to, the items listed in paragraphs (1) - (3) of this subsection:

(1) Criminal history disclosure of all convictions and deferred adjudications for each owner or designee engaged in the regular course of business as a vehicle inspection station;

(2) Proof of ownership and current status as required by the department. Such proof includes, but is not limited to, a current Certificate of Existence or Certificate of Authority from the Texas Secretary of State and a Certificate of Good Standing from the Texas Comptroller of Public Accounts; and

(3) All fees required pursuant to Texas Transportation Code, Chapter 548 (the Act). The vehicle inspection station new and renewal application fee is nonrefundable.

(d) If an incomplete new or renewal vehicle inspection station application is received, notice will be sent to the applicant stating that the application is incomplete and specifying the information required for completion.

(e) The new or renewal vehicle inspection station applicant has 60 calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the documentation, the application will be considered withdrawn and a new application must be submitted.

(f) A new or renewal vehicle inspection station application is complete when:

(1) It contains all items required by the department.

(2) It conforms to the Act, this chapter and the Texas vehicle inspection program's instructions.

(3) All fees have been paid pursuant to the Act.

(4) All requests for additional information have been satisfied.

(g) The vehicle inspection station certificate will expire on August 31 of the odd numbered year following the date of issuance and is renewable every two years thereafter.

(h) For a new or renewal vehicle inspection station application to be approved, the owner must:

(1) be at least 18 years of age;

(2) provide proof of identification as required by the department;

(3) not be currently suspended or revoked in the Texas vehicle inspection program;

(4) complete department-approved training;

(5) have a facility that meets the standards for the appropriate class set forth in this chapter;

(6) have equipment that meets the standards set forth in §23.13 of this title (relating to Equipment Requirements for All Classes of Vehicle Inspection Stations); and

(7) meet all other eligibility criteria under the Act or this chapter.

(i) Certificate holders of vehicle inspection stations must submit a new application, including applicable fees, in order to change a location, or make a change of ownership.

(j) Applicants for new or renewal vehicle inspection station certification must apply for one of the classes defined in paragraphs (1) - (3) of this subsection:

(1) Public--A station open to the public performing inspections on vehicles presented by the public. Stations open to the public will not be issued a fleet vehicle inspection station license unless such stations are currently certified as a public vehicle inspection stations;

(2) Fleet--A station not providing vehicle inspection services to the public; or

(3) Government--A station operated by a political subdivision, or agency of this state.

§23.2. Changes and Updates to Vehicle Inspection Station Information.

(a) A vehicle inspection station certificate holder must notify the department of a business name change in a manner prescribed by the department within 30 days of such change.

(b) If a vehicle inspection station ceases operations related to vehicle inspection, the certificate holder must notify the department and immediately return all forms, inspection certificates, signs, equipment furnished by the department and/or state authorized vendor(s), and other official materials relating to the state inspection program. Failure to comply with the requirement of this section may result in criminal prosecution, as well as necessary civil recovery action and may impede any reappointment of the vehicle inspection station.

§23.3. New or Renewal Vehicle Inspector Applications.

(a) Applicants for a new or renewal vehicle inspector certificate must apply in a manner prescribed by the department.

(b) By submitting a new or renewal vehicle inspector application form, the applicant agrees to allow the department to conduct background checks as authorized by law.

(c) A new or renewal vehicle inspector application must include, but is not limited to, the items listed in paragraphs (1) and (2) of this subsection:

(1) criminal history disclosure of all convictions and deferred adjudications of the vehicle inspector applicant; and

(2) all fees required pursuant to Texas Transportation Code, Chapter 548 (the Act). The new or renewal vehicle inspector application fee is nonrefundable.

(d) If an incomplete new or renewal vehicle inspector application is received, notice will be sent to the applicant stating that the application is incomplete and specifying the information required for completion.

(e) The new or renewal vehicle inspector applicant has 60 calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the documentation, the application will be considered withdrawn.

(f) A new or renewal vehicle inspector application is complete when:

(1) It contains all items required by the department.

(2) It conforms to the Act, this chapter, and the Texas vehicle inspection program's instructions.

(3) All fees have been paid pursuant to the Act.

(4) All requests for additional information have been satisfied.

(g) The new or renewal vehicle inspector certificate will expire on August 31 of the even numbered year following the date of issuance and is renewable every two years thereafter.

(h) For a new or renewal vehicle inspector application to be approved the applicant must:

(1) be at least 18 years of age;

(2) hold a valid driver license to operate a motor vehicle in Texas;

(3) not be currently suspended or revoked in the Texas vehicle inspection program;

(4) complete department approved training as outlined in this chapter;

(5) pass with a grade of not less than 80, an examination on the Act, this chapter, and regulations of the department pertinent to the Texas vehicle inspection program;

(6) successfully demonstrate ability to correctly operate the testing devices; and

(7) meet all other eligibility criteria under the Act or this chapter.

§23.4. Changes and Updates to Vehicle Inspector Employment, Address, or Name.

(a) If a certified vehicle inspector changes their place of employment, the inspector must prove their ability to correctly operate the testing equipment at such new vehicle inspection station.

(b) If a certified vehicle inspector changes their place of residence, the inspector must notify the department of their new permanent street address within 30 days of the date of the change.

(c) If a certified vehicle inspector changes their name, the inspector must notify the department of their new name within 30 days of the date of the change.

§23.5. Vehicle Inspection Station and Vehicle Inspector Disqualifying Criminal Offenses.

(a) Vehicle inspection stations and vehicle inspectors are entrusted with ensuring the safety and fitness of vehicles traveling on the roads of Texas. Vehicle inspection stations and vehicle inspectors have constant access to and are responsible for the lawful disposition of government documents. For these reasons, the department has determined that the offenses contained within this section relate directly to the duties and responsibilities of vehicle inspection stations and vehicle inspectors certified under Texas Transportation Code, Chapter 548. The types of offenses listed in this section are general categories that include all specific offenses within the corresponding chapter of the Texas Penal Code and any such offenses regardless of the code in which they appear.

(b) The offenses listed in paragraphs (1) - (9) of this subsection are intended to provide guidance only, and are not exhaustive of either the types of offenses that may relate to vehicle inspections or the operation of a vehicle inspection station or those that are independently disqualifying under Texas Occupations Code, §53.021(a)(2) - (4). The disqualifying offenses also include those crimes under the laws of another state or the United States, if the offense contains elements that are substantially similar to the elements of a disqualifying offense under the laws of this state. Such offenses also include the "aggravated" or otherwise heightened versions of the offenses listed in paragraphs (1) - (9) of this subsection. In addition, after due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in vehicle inspections or the operation of a vehicle inspection station, the department may find that a conviction not described in this section also renders a person unfit to hold a certificate as a vehicle inspector or vehicle inspection station owner. In particular, an offense that is committed in one's capacity as a vehicle inspection station owner or vehicle inspector, or an offense that is facilitated by licensure as an owner or inspector, will be considered related to the occupation and will render the person unfit to hold the certification.

(1) Arson, Criminal Mischief, and Other Property Damage or Destruction (Texas Penal Code, Chapter 28).

(2) Robbery (Texas Penal Code, Chapter 29).

(3) Burglary and Criminal Trespass (Texas Penal Code, Chapter 30).

(4) Theft (Texas Penal Code, Chapter 31).

(5) Fraud (Texas Penal Code, Chapter 32).

(6) Bribery and Corrupt Influence (Texas Penal Code, Chapter 36).

(7) Perjury and Other Falsification (Texas Penal Code, Chapter 37).

(8) Criminal Homicide (Texas Penal Code, Chapter 19).

(9) Driving Related Intoxication Offenses (Texas Penal Code, Chapter 49).

(c) A felony conviction for any such offense is disqualifying for ten years from the date of conviction, unless the offense was committed in one's capacity as a vehicle inspection station owner or vehicle inspector, or was facilitated by licensure as an owner or inspector, in which case it is permanently disqualifying. Conviction for a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, or an offense listed in Texas Code of Criminal Procedure, Article 42.12 (3)(g), is permanently disqualifying.

(d) A felony conviction for an offense not listed or described in this section that does not relate to the occupation is disqualifying for five years from the date of conviction, pursuant to Texas Occupations Code, §53.021(a)(2).

(e) A Class A misdemeanor conviction for an offense listed in this section and any other offense determined by the department to directly relate to the duties and responsibilities of vehicle inspection stations or vehicle inspectors, including any unlisted offense committed in one's capacity as a vehicle inspection station owner or vehicle inspector or that was facilitated by licensure as an owner or inspector, is disqualifying for five years from the date of conviction.

(f) A Class B misdemeanor conviction for an offense listed in this section and any other offense determined by the department to directly relate to the duties and responsibilities of vehicle inspection stations or vehicle inspectors, including any unlisted offense committed in one's capacity as a vehicle inspection station owner or vehicle inspector or that was facilitated by licensure as an owner or inspector, is disqualifying for two years from the date of conviction.

(g) For purposes of this section, a person is convicted of an offense when an adjudication of guilt or an order of deferred adjudication for the offense is entered against the person by a court of competent jurisdiction.

(h) A person who is otherwise disqualified pursuant to the criteria in this section may submit documentation as detailed in paragraphs (1) - (8) of this subsection as evidence of his or her fitness to perform the duties and discharge the responsibilities of a vehicle inspection station certificate holder or vehicle inspector:

(1) The extent and nature of the person's past criminal activity.

(2) The age of the person when the crime was committed.

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

(4) The conduct and work activity of the person before and after the criminal activity.

(5) Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release.

(6) Letters of recommendation from:

(A) prosecutors, law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; or

(C) any other person in contact with the convicted person.

(7) Evidence the applicant has:

(A) maintained a record of steady employment;

(B) supported the applicant's dependents;

(C) maintained a record of good conduct; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

(8) Any other evidence relevant to the person's fitness for the certification sought.

(i) The failure to provide the required documentation in a timely manner may result in the proposed action being taken against the application or license.

§23.6. Training.

(a) When attending a course offered by the department, the applicant must:

(1) Provide a department approved government issued photo identification.

(2) Not be under the influence of drugs or alcohol.

(3) Cooperate with the classroom rules as provided by department personnel.

(4) Maintain good order and discipline during the training course.

(5) Successfully pass the written examination.

(b) Conduct which is disruptive or unsafe shall be grounds for immediate ejection from the training course and may result in the termination of the application process.

(c) The applicant for a vehicle inspection station certification or vehicle inspector will be given an opportunity to pass the written exam up to three times. Failure to pass the exam within 30 days of the date of training will terminate the application process.

(d) Once a completed application for a renewal of an vehicle inspection station or vehicle inspector certification is received by the department, the applicant may be required to receive training and take a test prior to recertification.

(e) The department may certify external vehicle inspector training schools to provide training to applicants.

(f) Each certified vehicle inspector must qualify, by training and examination approved by the department, for one or more of the endorsements listed in paragraphs (1) - (3) of this subsection which indicate the type of vehicle inspection certificates the inspector is certified to issue and the types of vehicle inspections the inspector is qualified to perform.

(1) S. May inspect any vehicle requiring a safety only vehicle inspection certificate, i.e., one-year, two-year, trailer, and motorcycle.

(2) C. May inspect any vehicle requiring a commercial inspection certificate, i.e., commercial motor vehicle and commercial trailer.

(3) E. May inspect any vehicle requiring an emissions test certificate, i.e., one-year safety/emissions and one-year emissions only (unique emissions test-only inspection certificate).

(g) The department representative may, when the vehicle inspector performance warrants, require the certified vehicle inspector to take all or part of the written and demonstration test at any time, or may require attendance at any vehicle inspection training program. Failure to pass a required test may result in suspension of the vehicle inspector's certificate.

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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SUBCHAPTER B. GENERAL VEHICLE INSPECTION STATION REQUIREMENTS

37 TAC §§23.11 - 23.14

The Texas Department of Public Safety (the department) proposes new §§23.11 - 23.14, concerning General Vehicle Inspection Station Requirements. These new sections are filed simultaneously with the repeal of current Subchapter B, concerning General Inspection Requirements. The proposed new Subchapter B is intended to reorganize and consolidate the rules governing inspection station facilities, equipment, and the conduct of inspectors and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by vehicle inspection stations and vehicle inspectors with the statutes and regulations pertaining to the safety and emissions inspections of motor vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than 30 days from the date of publication of this proposal.

The new sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Texas Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.11. General Vehicle Inspection Station Requirements.

(a) To be certified as a vehicle inspection station, the station's facilities must meet the standards listed in paragraphs (1) - (7) of this subsection:

(1) be of a permanent type;

(2) have a permanent roof;

(3) have a minimum of two permanent walls constructed of substantial material such as steel, masonry or wood that is effective at protecting the building and equipment from the elements;

(4) have a hard surfaced floor;

(5) have a display area located in the customer waiting area and of sufficient size as approved by the department. Only official notices, licenses, letters from the department, procedure charts, or other documents authorized by the department may be exhibited in the display area;

(6) a secured area for storage of records and necessary supplies; and

(7) a designated customer waiting area protected from the elements.

(b) Inspection area--The designated space approved for inspection purposes. Inspection areas must meet the standards listed in paragraphs (1) - (6) of this subsection.

(1) Be an area of 12 feet wide by 24 feet long of minimum space and must be of a hard surface such as asphalt or concrete.

(2) Be clear of obstacles and debris that would interfere with the safe operation of a vehicle and inspection of required items.

(3) Be sufficiently lighted to afford good visibility for performing all inspection procedures.

(4) Be contained entirely within a building and protected from the elements.

(5) Satisfy the applicable building and space requirements as described in this section.

(6) The inspection area for a motorcycle only station must be at least eight feet wide by ten feet long, level and hard surfaced.

(c) A vehicle inspection station may have an additional area approved by the department for the inspection of motor homes and trailers. This area may be located outside the building.

§23.12. Standards of Conduct.

(a) All vehicle inspection stations must record the inspection of all vehicles, whether the vehicle passed, failed, or was repaired, into the appropriate state vehicle inspection database using a department approved device during each inspection and at the time of that inspection.

(b) The operations manual for official vehicle inspection stations and certified vehicle inspectors must be the instruction manual

and training guide for the operation of all vehicle inspection stations and certified vehicle inspectors. It will serve as procedure for all vehicle inspection station operations and inspections performed.

(c) Fleet and government vehicle inspection stations must not inspect vehicles owned by officers, employees, or the general public.

(d) A vehicle inspection station must have a certified and properly endorsed vehicle inspector to perform inspections in a prompt manner during posted business hours.

(e) No vehicle inspection station shall refuse to inspect a vehicle for which it is endorsed that is presented for inspection during the posted business hours.

(f) A certified vehicle inspector must conduct a complete and thorough inspection of every vehicle presented for an official inspection in accordance with this chapter and Texas Transportation Code, Chapter 548 (the Act), as authorized by the vehicle inspector's certification and by the vehicle inspection station's endorsement.

(g) A certified vehicle inspector must not use, nor be under the influence of, alcohol or drugs while on duty. Prescription drugs may be used when prescribed by a licensed physician, provided the inspector is not impaired while on duty.

(h) A certified vehicle inspector must inspect a vehicle presented for inspection within a reasonable time.

(i) A certified vehicle inspector must notify the department representative supervising the vehicle inspection station immediately if his driver license is suspended or revoked.

(j) A certified vehicle inspector must conduct each inspection and affix each inspection certificate, in the approved inspection area of the vehicle inspection station location designated on the certificate of appointment. The road test may be conducted outside this area.

(k) The certified vehicle inspector must consult the vehicle owner or operator prior to making a repair or adjustment.

(l) Inspections may be performed by more than one certified vehicle inspector, but the inspector of record is responsible for ensuring that the inspection is completed in accordance with the Act and this chapter.

(m) The certified vehicle inspector must not require a vehicle owner whose vehicle has been rejected to have repairs made at a specific garage.

(n) The certified vehicle inspector must maintain a clean and orderly appearance and be courteous in his contact with the public.

(o) Any services offered in conjunction with the vehicle inspection must be separately described and itemized on the invoice or receipt.

§23.13. Equipment Requirements for All Classes of Vehicle Inspection Stations.

(a) All testing equipment must be approved by the department. All testing equipment must be installed and used in accordance with the manufacturer's and department's instructions. Equipment must be arranged and located at or near the approved inspection area and readily available for use.

(b) When equipment adjustments and calibrations are needed, the manufacturer's specifications and department's instructions must be followed. Defective equipment must not be used and the license holder must cease performing inspections until such equipment is replaced, recalibrated or repaired and returned to an operational status.

(c) Each vehicle inspection station is required to possess and maintain, at a minimum, the equipment listed in paragraphs (1) - (9) of this subsection.

(1) A measured and marked brake test area which has been approved by the department, or an approved brake testing device.

(2) A measuring device clearly indicating measurements of 12 inches, 15 inches, 20 inches, 24 inches, 54 inches, 60 inches, 72 inches and 80 inches to measure reflector height, clearance lamps, side marker lamps and turn signal lamps on all vehicles, except 80 inch measurement not required of motorcycle-only vehicle inspection stations.

(3) A permanent ink marking pen for completing the reverse side of the windshield vehicle inspection certificate.

(4) A scraping device for removing the old vehicle inspection certificate.

(5) A gauge for measuring tire tread depth.

(6) A 1/4 inch round hole punch.

(7) A measuring device for checking brake pedal reserve clearance, except vehicle inspection stations with only a motorcycle endorsement.

(8) A department approved device for measuring the light transmission of sunscreening devices. This requirement does not apply to government inspection stations, or fleet inspection stations which have provided the department biennial written certification that the government inspection stations or fleet inspection station has no vehicles equipped with a sunscreening device. This requirement does not apply to vehicle inspection stations with only a motorcycle and/or trailer endorsement.

(9) A department approved device with required adapters for checking fuel cap pressure. The department requires vehicle inspection stations to obtain updated adapters as they become available from the manufacturer. A vehicle inspection station may not inspect a vehicle for which it does not have an approved adapter for that vehicle. This requirement does not apply to government inspection stations or fleet inspection stations which have provided the department biennial written certification that the government inspection stations or fleet inspection station has no vehicles meeting the criteria for checking gas cap pressure or that these vehicles will be inspected by a public inspection station capable of checking gas caps. This requirement does not apply to motorcycle-only or trailer-only inspection stations and certain commercial inspection stations that only inspect vehicles powered by a fuel other than gasoline.

(d) To be certified by the department as a non-emissions vehicle inspection station, the station must have:

(1) an approved and operational electronic station interface device; and

(2) a telephone line, or internet connection for the electronic station interface device to be used during vehicle inspections either dedicated solely for use with the electronic device, or shared with other devices in a manner as approved by the department.

(e) For vehicle emissions inspection station requirements, see Subchapter E of this chapter (relating to Vehicle Emissions Inspection and Maintenance Program).

§23.14. Vehicle Inspection Station Signage.

(a) Every public vehicle inspection station must display the official vehicle inspection station sign and hours of operation in a manner clearly visible to the public.

(b) The official vehicle inspection station sign remains the property of the department as a means of identification of the vehicle inspection station. The sign must be surrendered upon demand by the department.

(c) The department will issue only one official vehicle inspection station sign per public vehicle inspection station license issued. The sign must not be altered in any manner. Dissimilar signs may also be displayed.

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

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SUBCHAPTER C. VEHICLE INSPECTION STATION OPERATION

37 TAC §§23.21 - 23.30

The Texas Department of Public Safety (the department) proposes new §§23.21 - 23.30, concerning Vehicle Inspection Station Operation. These new sections are filed simultaneously with the repeal of current Subchapters C and F, consisting of §23.41 and §23.42 and §§23.71 - 23.81, respectively. The proposed new Subchapter C is intended to reorganize and consolidate the rules governing inspection station operations and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by vehicle inspection stations and vehicle inspectors with the statutes and regulations pertaining to the safety and emissions inspections of motor vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than 30 days from the date of publication of this proposal.

The new sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Texas Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.21. Electronic Vehicle Inspection Station Interface Device Access.

(a) All vehicle inspections performed in non-emissions testing inspection stations must be reported using an approved method or device at the time the inspection is conducted. Access to the system at certified vehicle inspection stations must be controlled using procedures, processes, and protocols as established by the department.

(b) The records maintained in the database are governmental records. Fraudulent use of the database may subject the person to criminal prosecution, as well as administrative action.

(c) Vehicle inspectors and all other authorized users must be held accountable for the security and confidentiality of all assigned access processes including, but not limited to, passwords, protocols, tokens, or access/identification cards.

(d) Before each official vehicle inspection begins, the inspector must use a unique identifier protocol as established by the department which links the inspection record with the certified vehicle inspector performing the inspection. The inspector of record entering his unique identifier must be responsible for the inspection of all required items of inspection, enter all information into the electronic station interface device at the time of inspection, and complete other documents as required.

(e) Vehicle inspectors may not give, share, lend, or divulge this unique identifier protocol, including but not limited to: passwords, personal identification numbers (PIN), tokens, or access/identification cards to another person. Failure to comply with this section may result in suspension or revocation of the vehicle inspector's certification as well as any appropriate criminal action or administrative disciplinary action.

(f) The department may require certified vehicle inspectors to acknowledge the department's policy for use and protection of access procedures.

§23.22. Vehicle Inspection Certificates.

(a) When a certificate is issued to a vehicle which has passed an inspection, the inspection certificate:

(1) must be issued in numerical sequence;

(2) must be completed, signed and affixed to the vehicle at the time of inspection by the vehicle inspector performing the inspection;

(3) must be entered into the electronic station interface device; and

(4) must have an unaltered numerical insert placed on the certificate indicating the month and year of expiration, or have punched the month and year of expiration on the trailer/motorcycle, or commercial window/commercial trailer certificates.

(b) If the electronic station interface is not operational:

(1) The vehicle inspector must follow the procedures for manually recording inspections.

(2) The vehicle inspection data must be reported using the electronic station interface prior to the performance of any additional inspections.

(c) If a vehicle inspection certificate is removed from the vehicle, it must be destroyed so that it cannot be reused. Certificates must not be transferred to another windshield or reissued.

(d) Vehicles that do not meet the inspection requirements must be issued a rejection receipt.

§23.23. Lost, Stolen, or Destroyed Emission Inspection Certificates.

(a) If an emission inspection certificate has been lost or stolen, then the vehicle may be presented at a department waiver facility for inspection and applicable fees must be paid. The replacement certificate is valid for the remaining period of validity of the original certificate.

(b) Proof must be provided regarding the nature of the loss, destruction, or theft by either:

(1) An affidavit describing the circumstances of the loss or destruction.

(2) An offense report from a law enforcement agency describing the nature of the theft.

(c) Alternatively, the vehicle may be reinspected, with the certificate issued being valid for 12 months from month of issuance.

§23.24. Responsibilities for Vehicle Inspection Certificates.

(a) Vehicle inspection station owners and inspectors are responsible for the safeguarding of all inspection certificates, number inserts and out of state identification certificates disbursed to, confirmed at and activated in their vehicle inspection station. The inspection certificates, number inserts, and out of state identification certificates must be kept under lock and key in a department approved secure container with a locking device and must be kept at the vehicle inspection station during posted business hours and must be available for department audit.

(b) Vehicle inspection stations may not transfer, furnish, give, loan or sell certificates to any other vehicle inspection station. A vehicle inspection station's failure to have an adequate supply of certificates on hand at all times may be cause for suspension or revocation of the vehicle inspection station's certificate of appointment.

(c) Each vehicle inspection station must bear the risk of loss for all inspection certificates disbursed to that vehicle inspection station. Confirmed receipt of inspection certificates by a vehicle inspection station must confirm delivery and final purchase of such inspection certificates. Each vehicle inspection station must be liable to the department for the state mandated fees of such inspection certificates.

(d) A vehicle inspection station must report each stolen inspection certificate to:

(1) appropriate local law enforcement authorities, within 24 hours of the discovery; and

(2) the local department representative, as soon as practical.

(e) The vehicle inspection station will not be reimbursed for lost or stolen inspection certificates.

§23.25. Return of Unused Vehicle Inspection Certificates.

Any unused vehicle inspection certificates must be returned in a manner prescribed by the department. The department's count of any returned certificates is final. Refunds for eligible certificates will be made utilizing the State of Texas refund voucher.

§23.26. Method of Payment.

(a) Payment for the purchase of vehicle inspection certificates, safety automation fees, original application for or renewal of all certifications, replacement of any department issued property, and/or any other fee required by Texas Transportation Code, Chapter 548 or this chapter are due and payable at the time of order and/or billing.

(b) Within 30 days of being notified by the department that a fee for an application has been dishonored or reversed, the applicant must submit a cashier's check, or money order made payable to the "Department of Public Safety" in the amount of the dishonored or reversed fee, plus any applicable insufficient fund fees.

(c) If payment is dishonored or reversed prior to issuance of the certification, the application will be abandoned as "incomplete". If the certification has been issued prior to being dishonored or reversed, revocation proceedings will be initiated. The department may dismiss a pending revocation proceeding upon receipt of payment of the full amount due including any additional fees.

(d) In addition to any action described in subsection (b) of this section, the first and second occurrence of an electronic transfer of funds or check being reversed or dishonored by the vehicle inspection station's financial institution for insufficient funds will result in orders being held until funds are replaced. On the third occurrence in a one year period, the vehicle inspection station's future certificate orders will be held for six business days thereafter.

§23.27. Vehicle Inspection Station Acquisition of Certificates.

(a) The department requires vehicle inspection stations to acquire inspection certificates utilizing the electronic station interface device and department approved procedures to facilitate automation of the state inspection system.

(b) An automation fee for each safety inspection certificate and for each emissions inspection certificate must be charged to the vehicle inspection station, in addition to any other required fee. The automation fee may be passed to motorists at the time of the inspection in addition to any other statutorily authorized inspection fee.

(c) The payment transactions for certificates are limited to those compatible with electronic funds transfers, electronic checks, and similar transaction methods.

§23.28. Vehicle Inspection Fees.

(a) The vehicle inspection fee is a charge for performing the inspection only, and may not exceed the amount set by Texas Transportation Code, Chapter 548 or this chapter.

(b) The vehicle inspection station may collect the inspection fee at the time of the original inspection whether the vehicle is passed or rejected.

(c) Fees for additional services must be expressly authorized or approved by the customer, and must be separately listed on the bill from the statutorily mandated inspection fee.

(d) A vehicle inspection station or vehicle inspector may not act in any manner that could reasonably be expected to cause confusion or misunderstanding on the part of an owner or operator presenting a vehicle regarding the relationship between the statutorily mandated inspection fee and a fee for any other service or product offered by the vehicle inspection station.

(e) Upon request by the inspection customer, a public vehicle inspection station must provide a receipt at no charge for the paid inspection that shows the certificate number issued and the total fee paid for the inspection.

§23.29. Retention of Records.

(a) Records must be kept in a safe place within the vehicle inspection station.

(b) Records must be available to authorized department representatives.

(c) Records must be filed in a manner to ensure ready availability.

(d) Duplicate copies of any vehicle inspection forms, rejection receipts and out of state identification certificates must be kept by the vehicle inspection station for at least one year from the date of completion.

(e) The vehicle inspection station is not required to maintain duplicate paper records of electronically reported inspections or transactions.

§23.30. Vehicle Inspection Station Record Audits.

Vehicle inspection stations must grant access to the department representative, for the purpose of auditing records pertaining to the department's vehicle inspection program. Records must be made available to the department's representative at the station premises.

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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D. Phillip Adkins
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SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

37 TAC §23.41, §23.42

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 37 TAC §23.41 and §23.42 are not included in the print version of the Texas Register. The figures are available in the on-line version of the December 28, 2012, issue of the Texas Register.)

The Texas Department of Public Safety (the department) proposes new §23.41 and §23.42, concerning Vehicle Inspection Items, Procedures, and Requirements. These new sections are filed simultaneously with the repeal of current Subchapter D consisting of §§23.51 - 23.53. The proposed new Subchapter D is intended to reorganize and consolidate the rules governing the required inspection items and the required procedures for their inspection and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by vehicle inspection stations and vehicle inspectors with the statutes and regulations pertaining to the safety and emissions inspections of motor vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than 30 days from the date of publication of this proposal.

The new sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Texas Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.41. Passenger (Non-Commercial) Vehicle Inspection Items.

(a) All items of inspection enumerated in this section shall be required to be inspected in accordance with the Texas Transportation Code, Chapter 547, any other applicable state or federal law, and department or federal regulation as provided in the Operations and Training Manual prior to the issuance of an inspection certificate.

(b) All items must be inspected in accordance with the attached inspection procedures. (See attached graphic reflecting excerpts from the Operations and Training Manual, Chapter 4.)
Figure: 37 TAC §23.41(b)

§23.42. Commercial Vehicle Inspection Items.

(a) All items of inspection enumerated in this section shall be required to be inspected according to the Federal Motor Carrier Safety Regulations, Texas Transportation Code, Chapter 547, and any other applicable state law and department regulation as provided in the Operations and Training Manual prior to the issuance of an inspection certificate.

(b) All items must be inspected in accordance with the attached inspection procedures. (See attached graphic reflecting excerpts from the Operations and Training Manual, Chapter 6.)
Figure: 37 TAC §23.42(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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SUBCHAPTER E. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM

37 TAC §§23.51 - 23.58

The Texas Department of Public Safety (the department) proposes new §§23.51 - 23.58, concerning the Vehicle Emissions Inspection and Maintenance Program. These new sections are filed simultaneously with the repeal of current Subchapter E consisting of §23.61 and §23.62. The proposed new Subchapter E is intended to reorganize and consolidate the rules governing the Vehicle Emissions Inspection and Maintenance Program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by vehicle inspection stations and vehicle inspectors with the statutes and regulations pertaining to the safety and emissions inspections of motor vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than 30 days from the date of publication of this proposal.

The new sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Texas Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.51. Vehicle Emissions Inspection Requirements.

(a) In affected counties, to be certified by the department as a vehicle inspection station, the station must be certified by the department to perform vehicle emissions testing. This provision does not apply to vehicle inspection stations certified by the department as stations endorsed only to issue one or more of the following inspection certificates: trailer certificates, motorcycle certificates, commercial motor vehicle windshield certificates, or commercial trailer certificates.

(b) A vehicle inspection station in a county not designated as an affected county shall not inspect a designated vehicle unless the vehicle inspection station is certified by the department to perform emissions testing, or unless the motorist presenting the vehicle signs an affidavit on a form provided by the department stating the vehicle is exempted from emissions testing. The affidavit will be held by the vehicle inspection station for collection by the department. Under the exceptions outlined in paragraphs (1) - (3) of this subsection, a vehicle registered in an affected county may receive a safety inspection at a vehicle inspection station in a non-affected county.

(1) The vehicle is not a designated vehicle because it has not and will not be primarily operated in an affected county. This exception includes the subparagraphs (A) and (B) of this paragraph:

(A) Company fleet vehicles owned by business entities registered at a central office located in an affected county but operated from branch offices and locations in non-affected counties on a permanent basis.

(B) Hunting and recreational vehicles registered to the owner in an affected area, but permanently maintained on a hunting property or vacation home site in a non-affected county.

(2) The vehicle no longer qualifies as a designated vehicle because it no longer and will be no longer primarily operated in an

affected county. For example, the vehicle registration indicates it is registered in an affected county, but the owner has moved, does not currently reside in, nor will primarily operate the vehicle in an affected county.

(3) The vehicle is registered in an affected county and is primarily operated in a non-affected county, but will not return to an affected county prior to the expiration of the current inspection certificate. Under this exception the vehicle will be reinspected at a vehicle inspection station certified to do vehicle emissions testing immediately upon return to an affected county. Examples of this exception include:

(A) Vehicles operated by students enrolled at learning institutions.

(B) Vehicles operated by persons during extended vacations.

(C) Vehicles operated by persons on extended out of county business.

(c) All designated vehicles must be emissions tested at the time of and as a part of the designated vehicle's annual vehicle safety inspection at a vehicle inspection station certified by the department to perform vehicle emissions testing. The exceptions outlined in paragraphs (1) and (2) of this subsection apply to this provision.

(1) Commercial motor vehicles, as defined by Texas Transportation Code, §548.001, meeting the description of "designated vehicle" provided in this section. Designated commercial motor vehicles must be emissions tested at a vehicle inspection station certified by the department to perform vehicle emissions testing and must be issued an emissions test only inspection certificate, as authorized by Texas Transportation Code, §548.251, affixed to the lower left-hand corner of the windshield of the vehicle, immediately above the registration sticker, prior to receiving a commercial motor vehicle safety inspection certificate pursuant to Texas Transportation Code, Chapter 548. The emissions test only inspection certificate must be issued within 15 calendar days prior to the issuance of the commercial motor vehicle safety inspection certificate and will expire at the same time the newly issued commercial motor vehicle safety inspection certificate expires.

(2) Vehicles presented for inspection by motorists in counties not designated as affected counties meeting other exceptions listed in this section.

(d) A vehicle with a currently valid safety inspection certificate presented for an "Emissions Test on Resale" inspection shall receive an emissions test. The owner or selling dealer may choose one of two options:

(1) a complete safety and emissions test and receipt of a new inspection certificate; or

(2) an emissions test and receipt of the emissions test only inspection certificate affixed to the lower left-hand corner of the windshield of the vehicle, immediately above the registration sticker. The emissions test only inspection certificate will expire at the same time as the safety inspection certificate currently displayed on the vehicle at the time the emissions test-only certificate is issued.

(e) Any vehicle not listed as an exempt vehicle that is capable of being powered by gasoline, from two years old up to and including 24 years old, presented for the annual vehicle safety inspection in affected counties will be presumed to be a designated vehicle and will be emissions tested as a part of the annual vehicle safety inspection. Emissions testing will be conducted as follows:

(1) In all affected counties, except Travis, Williamson, and El Paso counties:

(A) All 1996 model year and newer designated vehicles, which are equipped with an onboard diagnostic (OBD) system, will be emission tested using approved OBD inspection and maintenance (I/M) test equipment.

(B) All 1995 model year and older designated vehicles will be emission tested using the acceleration simulation mode (ASM-2) I/M test equipment.

(C) Vehicles which cannot be tested using the prescribed emission testing equipment will be tested using the default methods described within this subparagraph, only as prompted by the emissions testing analyzer or as approved by the department. OBD vehicles will be tested using ASM-2 test equipment. If the vehicle cannot be tested on ASM-2 test equipment (four-wheel drive and unique transmissions), then the vehicle will be tested using approved two-speed idle (TSI) I/M test equipment.

(2) This paragraph applies to all designated vehicles in Travis, Williamson and El Paso counties.

(A) All 1996 model year and newer designated vehicles, which are equipped with an onboard diagnostic system, will be emission tested using approved OBD I/M test equipment.

(B) All 1995 model year and older designated vehicles will be emissions tested using TSI I/M test equipment.

(C) Vehicles which cannot be tested using the prescribed emission testing equipment will be tested using the following default method, only as prompted by the emissions testing analyzer or as approved by the department. OBD vehicles will be tested using TSI I/M test equipment.

(f) Vehicles registered in affected counties will be identified by a distinguishing validation registration sticker or a registration sticker imprinted with the name of the county, as determined by the Texas Department of Motor Vehicles.

(g) Vehicles inspected under the vehicle emissions testing program and found to meet the requirements of the program in addition to all other vehicle safety inspection requirements will be approved by the certified inspector, who will thereafter affix to the windshield a unique emissions inspection certificate pursuant to Texas Transportation Code, §548.251. The only valid inspection certificate for designated vehicles shall be a unique emissions inspection certificate issued by the department, unless otherwise provided in this chapter.

(h) The department shall perform challenge tests to provide for the reinspection of a motor vehicle at the option of the owner of the vehicle as a quality control measure of the emissions testing program. A motorist whose vehicle has failed an emissions test may request a free challenge test through the department within 15 calendar days.

(i) Federal and state governmental or quasi-governmental agency vehicles that are primarily operated in affected counties that fall outside the normal registration or inspection process shall be required to comply with all vehicle emissions I/M requirements contained in the Texas I/M State Implementation Plan (SIP).

(j) Any motorist in an affected county whose designated vehicle has been issued an emissions related recall notice shall furnish proof of compliance with the recall notice prior to having their vehicle emissions tested at the next testing cycle. As proof of compliance, the motorist may present a written statement from the dealership or leasing agency indicating the emissions repairs have been completed.

(k) Inspection certificates previously issued in a newly affected county shall be valid and remain in effect until the expiration date thereof.

(l) An emissions only test inspection certificate expires at the same time the annual vehicle safety inspection certificate it relates to expires.

(m) The department may perform quarterly equipment and/or gas audits on all vehicle emissions analyzers used to perform vehicle emissions tests. If a vehicle emissions analyzer fails the calibration process during the gas audit, the department may cause the appropriate vehicle inspection station to cease vehicle emissions testing with the failing emissions analyzer until all necessary corrections are made and the vehicle emissions analyzer passes the calibration process.

(n) Pursuant to the Texas I/M SIP, the department may administer and monitor a follow up loaded mode I/M test on at least 0.1% of the vehicles subject to vehicle emissions testing in a given year to evaluate the mass emissions test data as required in Code of Federal Regulations, Title 40, §51.353(c)(3).

(o) Vehicle owners receiving a notice from the department requiring an emission test shall receive an out-of-cycle test, if the vehicle already has a valid safety and emission inspection certificate. This test will be conducted in accordance with the terms of the department's notice. The results of this verification emissions inspection shall be reported (online) to the Texas information management system vehicle identification database (VID). Vehicles identified to be tested by the notice will receive the prescribed test regardless of the county of registration and whether the vehicle has a valid safety inspection certificate or a valid safety and emissions inspection certificate. If the vehicle has a valid safety inspection certificate or a valid safety and emissions inspection certificate, the owner may choose one of two options:

(1) a complete safety and emissions test and receipt of a new inspection certificate; or

(2) an emissions test and receipt of the emissions test only inspection certificate affixed to the lower left-hand corner of the windshield of the vehicle, immediately above the registration sticker. The emissions test only inspection certificate will expire at the same time as the safety inspection certificate displayed on the vehicle at the time the unique emissions test-only certificate is issued.

(p) Pursuant to Texas Education Code, §51.207, public institutions of higher education located in affected counties may require vehicles to be emissions tested as a condition to receive a permit to park or drive on the grounds of the institution, including vehicles registered out of state.

(1) Vehicles presented under this subsection shall receive an emissions inspection and be issued a unique emissions test-only inspection certificate which will be affixed to the lower left hand corner of the windshield of the vehicle. Since this inspection certificate is not dated:

(A) For vehicles registered in this state from counties without an emissions testing program, the emissions test only inspection certificate will expire at the same time as the safety inspection certificate displayed on the vehicle at the time the emissions test only certificate is issued.

(B) For vehicles registered in another state, the emissions test only inspection certificate will expire on the twelfth month after the month indicated on the date of the vehicle inspection report (VIR) generated by the emissions inspection. Under no circumstances is the vehicle inspection station authorized to remove an out-of-state inspection and/or registration certificate, including safety, emissions, or a combination of any of the aforementioned.

(2) The vehicle inspector shall notify the operator of a vehicle presented for an emissions inspection under this subsection of the requirement to retain the VIR as proof of emissions testing under Texas Education Code, §51.207.

§23.52. Emissions Testing Waiver.

(a) The department may issue an emissions testing waiver to any vehicle that passes all requirements of the standard safety inspection portion of the annual vehicle safety inspection and meets the established criteria for a particular waiver. An emissions testing waiver defers the need for full compliance with vehicle emissions standards of the vehicle emissions inspection and maintenance (I/M) program for a specified period of time after a vehicle fails an emissions test. The motorist may apply once each testing cycle for the waiver.

(b) Qualified emissions related repairs are those repairs to emissions control components, including diagnosis, parts and labor, which count toward a low mileage waiver or individual vehicle waiver. To be considered qualified emissions related repairs, the repairs:

(1) Must be directly applicable to the cause for the emissions test failure.

(2) Must be performed after the initial emissions test or have been performed within 60 days prior to the initial emissions test.

(3) Must not be tampering related repairs.

(4) Must not be covered by any available warranty coverage unless the warranty remedy has been denied in writing by the manufacturer or authorized dealer.

(5) Must be performed by a recognized emissions repair technician of Texas at a recognized emissions repair facility of Texas to include the labor cost and/or diagnostic costs. If repairs are not performed by a recognized emissions repair technician of Texas at a recognized emissions repair facility of Texas, only the purchase price of parts applicable to the emissions test failure qualify as a repair expenditure for the low mileage waiver or individual vehicle waiver.

(c) Low mileage waiver.

(1) A vehicle may be eligible for a low mileage waiver provided it:

(A) has failed both its initial emissions inspection and retest;

(B) has incurred qualified emissions-related repairs, as defined in paragraph (2) of this subsection, costing $100 or more;

(C) has been driven less than 5,000 miles in the previous inspection cycle; and

(D) is reasonably expected to be driven fewer than 5,000 miles before the next inspection is required.

(2) The requirements listed in subparagraphs (A) - (C) of this paragraph must be met to receive a low mileage waiver:

(A) The vehicle must pass a visual inspection performed by a department representative to ensure the emissions repairs claimed have actually been performed.

(B) The diagnosis, parts, and labor receipts for the qualified emissions related repairs must be presented to the department and support that the emissions repairs claimed have actually been performed.

(C) The valid retest vehicle inspection report (VIR) and valid vehicle repair form (VRF) for the applicant vehicle must be presented to the department. If labor and/or diagnostic charges are being claimed towards the low mileage waiver amount, the VRF shall be completed by a recognized emissions repair technician of Texas.

(d) Individual vehicle waiver.

(1) If a vehicle has failed an emissions test required by the vehicle emissions I/M program, an applicant may petition the designated representative of the department for an individual vehicle waiver in order for the vehicle to receive a state inspection certificate. The applicant must demonstrate that all reasonable measures, such as diagnostics, repairs, or installation of replacement parts, have been implemented, but have failed to bring the vehicle into compliance with the program. The department will review the measures taken by the applicant to ensure they have been performed, further measures would be economically unfeasible during this inspection cycle and a waiver will result in a minimal impact on air quality. A vehicle may be eligible for an individual vehicle waiver provided:

(A) It failed both the initial emissions inspection and retest.

(B) The motorist has incurred qualified emissions related repairs, equal to or in excess of the maximum reasonable repair expenditure amounts, as defined in this section for the county in which the vehicle is registered.

(2) The applicable maximum reasonable repair expenditure amounts are:

(A) in affected counties, except El Paso county--$600; and

(B) in El Paso county--$450.

(3) The individual vehicle waiver shall be valid through the end of the twelfth month from the date of issuance. Motorists must apply for the individual vehicle waiver each testing cycle.

(4) The conditions listed in subparagraphs (A) - (C) of this paragraph must be met to receive an individual vehicle waiver:

(A) The vehicle must pass a visual inspection performed by a department representative to ensure the emissions repairs being claimed have actually been performed.

(B) The diagnosis, parts, and labor receipts for the qualified emissions related repairs must be presented to the department and support that the emissions repairs being claimed have been performed.

(C) The valid retest vehicle inspection report (VIR) and valid vehicle repair form (VRF) for the applicant vehicle must be presented to the department. If labor and/or diagnostic charges are being claimed towards the individual vehicle waiver, the VRF shall be completed by a recognized emissions repair technician of Texas.

§23.53. Time Extensions.

(a) The department may issue a time extension to any vehicle that passes all requirements of the standard safety inspection portion of the annual vehicle safety inspection and meets the established criteria for a particular time extension. A time extension defers the need for full compliance with vehicle emissions standards of the vehicle emissions inspection and maintenance (I/M) program for a specified period of time after a vehicle fails an emissions test. The motorist may apply once each testing cycle for the parts availability time extension. The motorist may apply every other testing cycle for the low income time extension.

(b) Low income time extension.

(1) The applicant must provide proof in writing, in a form approved by the department, that:

(A) The vehicle failed the initial emissions inspection test; proof shall be in the form of the original failed vehicle inspection report (VIR).

(B) The vehicle has not been granted a low income time extension in the previous testing cycle.

(C) The applicant is the owner of the vehicle that is the subject of the low income time extension.

(D) The applicant receives financial assistance from the Texas Health and Human Services Commission or the Texas Department of Aging and Disability Services due to indigence or the applicant's adjusted gross income (if the applicant is married, the applicant's adjusted gross income is equal to the applicant's adjusted gross income plus the applicant's spouse's adjusted gross income) is at or below the current federal poverty level as published by the United States Department of Health and Human Services, Office of the Secretary, in the Federal Register; proof shall be in the form of a federal income tax return or other documentation approved by the department that the applicant certifies as true and correct.

(2) After a vehicle receives an initial low income time extension, the vehicle must pass an emissions test prior to receiving another low income time extension.

(c) Parts availability time extension.

(1) The applicant must demonstrate to the department that:

(A) Reasonable attempts were made to locate necessary emissions control parts by retail or wholesale parts suppliers.

(B) Emissions related repairs cannot be completed before the expiration of the safety inspection certificate, or before the 30 day period following an out of cycle inspection because the repairs require an uncommon part.

(2) The applicant shall provide to the department:

(A) an original VIR indicating the vehicle failed the emissions test; and

(B) an invoice, receipt, or original itemized document indicating the uncommon part(s) ordered by: name; description; catalog number; order number; source of part(s), including name, address, and phone number of parts distributor; and expected delivery and installation date(s). The original itemized document must be prepared by a recognized emissions repair technician of Texas before a parts availability time extension can be issued.

(3) A parts availability time extension is not allowed for tampering related repairs.

(4) If the vehicle does not pass an emissions retest prior to the expiration of the parts availability time extension, the applicant must provide to the department adequate documentation that one of the conditions listed in subparagraph (A) or (B) of this paragraph exists:

(A) the motorist qualifies for a low mileage waiver, low income time extension or individual vehicle waiver; or

(B) the motor vehicle will no longer be operated in the affected county.

(5) A vehicle that receives a parts availability time extension in one testing cycle must have the vehicle repaired and retested prior to the expiration of such extension, or must qualify for another type of waiver or time extension to be eligible for a parts availability time extension in the subsequent testing cycle.

(6) The length of a parts availability time extension shall depend upon expected delivery and installation date(s) of the uncommon part(s) as determined by the department representative on a case by case basis. Parts availability time extensions will be issued for either 30, 60, or 90 days.

§23.54. Recognized Emissions Repair Technicians and Facilities.

(a) The department may recognize automotive repair technicians who meet the qualifications detailed in this subsection:

(1) have a minimum of three years full time automotive repair service experience;

(2) possess current certification in the areas listed in subparagraphs (A) - (D) of this paragraph based on the tests offered by the National Institute of Automotive Service Excellence (ASE):

(A) Engine Repair (ASE Test A1);

(B) Electrical/Electronic Systems (ASE Test A6);

(C) Engine Performance (ASE Test A8); and

(D) Advanced Engine Performance Specialist (ASE Test L1); and

(3) must be employed by a recognized emissions repair facility of Texas.

(b) A recognized emissions repair technician of Texas must perform the duties detailed in this subsection:

(1) complete and certify the vehicle repair form(s) (VRF); and

(2) notify the department in writing within 14 days of changes in the technician's ASE testing status.

(c) Failure to comply with this chapter or failure to meet the qualifications set out in this section may result in the withdrawal of the department's recognition of the technician.

(d) To be recognized by the department as a recognized emissions repair facility of Texas, the facility must:

(1) employ at least one full-time recognized emissions repair technician of Texas; and

(2) possess the following operational testing equipment, whether single or multi-functional:

(A) ammeter;

(B) compression tester;

(C) cooling system tester;

(D) dwell meter;

(E) engine analyzer;

(F) five gas exhaust analyzer (which can perform diagnostic repair) for at least hydrocarbon (HC), carbon monoxide (CO), carbon dioxide (CO2), and oxides of nitrogen (NOX), except for those in Travis, Williamson, and El Paso counties which require a four gas exhaust analyzer (which can perform diagnostic repair for at least hydrocarbon (HC), carbon monoxide (CO), and carbon dioxide (CO2));

(G) fuel pressure/pressure drop tester;

(H) ohmmeter;

(I) repair reference information;

(J) scan tool or onboard diagnostic (OBDII) capable testing equipment;

(K) tachometer;

(L) timing light;

(M) vacuum/pressure gauge;

(N) vacuum pump; and

(O) volt meter.

(e) A recognized emissions repair facility of Texas shall:

(1) notify the department in writing within 14 days of changes in the Automotive Service Excellence (ASE) testing status, employment status of a technician at a facility, or the facility's equipment functionality status; and

(2) upon application for recognition by the department, agree in writing to maintain compliance with the qualifications enumerated in subsection (a) of this section, to maintain recognition by the department.

(f) Failure to comply with this chapter or to meet the qualifications set in this section may result in the withdrawal of the department's recognition of the facility.

§23.55. Certified Emissions Inspection Station and Inspector Requirements.

(a) To be certified by the department as an emissions inspection station for purposes of the emissions inspection and maintenance (I/M) program, the station must:

(1) be certified by the department as an official vehicle inspection station;

(2) comply with this chapter, the DPS Operations Manual and Training Guide for Vehicle Inspection Stations and Certified Inspectors, Texas Transportation Code, Chapter 547 and Chapter 548, and regulations of the department;

(3) complete all applicable forms and reports as required by the department;

(4) purchase or lease emissions testing equipment currently certified by the Texas Commission on Environmental Quality (TCEQ) to emissions test vehicles and maintain existing emissions testing equipment to meet the certification requirements of the TCEQ;

(5) have a dedicated data transmission line for each vehicle emissions analyzer to be used to perform vehicle emissions tests; and

(6) enter into and maintain a business arrangement with the Texas Information Management System contractor to obtain a telecommunications link to the Texas Information Management System vehicle identification database (VID) for each vehicle emissions analyzer to be used to inspect vehicles as described in the Texas I/M State Implementation Plan (SIP).

(b) All public certified emissions inspection stations in affected counties, excluding Travis, Williamson and El Paso counties shall offer both the acceleration simulated mode (ASM-2) test and the onboard diagnostic (OBD) test. Certified emissions inspection stations in these affected counties desiring to offer OBD only emission testing to the public must request a waiver as low volume emissions inspection station from a department regional manager, as provided in §23.56 of this title (relating to Waiver for Low Volume Emissions Inspection Stations). All public certified emissions inspection stations in Travis, Williamson and El Paso counties must offer both the OBD and two speed idle (TSI) test.

(c) The fee for an emissions test must provide for one free retest for each failed initial emissions inspection, provided that the motorist has the retest performed at the same vehicle inspection station where the vehicle originally failed and the retest is conducted within 15 calendar days of the initial emissions test, not including the date of the initial emissions test.

(d) To qualify as a certified emissions inspector, an applicant must:

(1) be certified by the department as an official vehicle inspector;

(2) complete the training required for the vehicle emissions inspection program and receive the department's current approved inspector's certification for such training;

(3) comply with the DPS Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors, this chapter, and other applicable rules, regulations and notices of the department; and

(4) complete all applicable forms and reports as required by the department.

§23.56. Waiver for Low Volume Emissions Inspection Stations.

(a) This waiver allows a public inspection station to perform limited state required vehicle emissions testing on 1996 and newer model year vehicles using department approved onboard diagnostic (OBDII) testing equipment. Government and fleet inspection stations do not require this waiver.

(b) Limitations of low volume waiver.

(1) This low volume waiver does not authorize a vehicle inspection station to conduct an emissions inspection on a vehicle which is model year 1995 or older.

(2) Each month, the vehicle inspection station is allocated 150 emission tests. After the monthly test allocation of the vehicle inspection station has been used, no more inspections will be allowed until the next month. In the event that the station performs less than 150 emission tests, the remaining number will carry over to the next month. The annual waiver limit number will be automatically reset each January with no carry over from the previous year.

(c) Applications for low volume waiver must be submitted in a manner prescribed by the department.

(d) The low volume waiver is not available to vehicle inspection stations in Travis, Williamson, or El Paso counties.

§23.57. Emissions Analyzer Access/Identification Card.

(a) Access to the vehicle emissions analyzers at certified inspection stations in all counties shall be controlled using an access/identification card or other protocol as established by the department.

(b) Access/Identification Card (access/ID card).

(1) The access/ID card is the inspector's official identification. Inspectors must carry the access/ID card on their person at all times while performing inspection duties; and it must be presented to any department official upon request.

(2) Access/ID cards are department property and are nontransferable. They may not be duplicated or displayed other than on an inspector's person and must be returned to the department upon request. The inspector is responsible for all transactions made between the vehicle analyzer and the Texas Information Management System using that inspector's access/ID card.

(3) The inspector is responsible for maintenance of the card. Loss of an access/ID card shall immediately be reported to the proper department representative. The replacement fee for a lost, defaced, stolen, or discarded access/ID card is $10.

(4) The data records maintained in the Texas Information Management System are government records. Fraudulent use of the access/ID card may subject the user to criminal action under either Texas Penal Code, §37.10, Texas Transportation Code, §548.601, or both, as well as administrative action by the department.

(c) Prior to issuance of a license, applicants must acknowledge having read and understood the department's policy for use and protection of use of the emissions analyzer access/identification card.

§23.58. Prohibitions.

(a) No person may issue or allow the issuance of a vehicle inspection report (VIR), as authorized by the department, unless all applicable air pollution emissions control related requirements of the annual vehicle safety inspection and the vehicle emissions inspection and maintenance requirements and procedures contained in the Texas inspection and maintenance (I/M) State Implementation Plan (SIP) are completely and properly performed in accordance with the rules and regulations adopted by the department and the Texas Commission on Environmental Quality (TCEQ).

(b) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen inspection certificates, VIRs, vehicle repair form(s) (VRFs), vehicle emissions repair documentation, or other documents which may be used to circumvent the vehicle emissions inspection and maintenance requirements and procedures contained in Texas Transportation Code, Chapter 548, and the Texas I/M SIP.

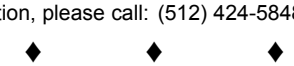
(c) No organization, business, person, or other entity may represent itself as an inspector certified by the department, unless such certification has been issued pursuant to the certification requirements and procedures contained in the Texas I/M SIP, this chapter, and the regulations of the department.

(d) No person may act as or offer to perform services as a recognized emissions repair technician of Texas or a recognized emissions repair facility of Texas without first obtaining and maintaining recognition by the department.

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 December 12, 2012.

TRD-201206422
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 424-5848



SUBCHAPTER F. VIOLATIONS AND ADMINISTRATIVE PENALTIES

37 TAC §23.61, §23.62

The Texas Department of Public Safety (the department) proposes new §23.61 and §23.62, concerning Violations and Administrative Penalties. These new sections are filed simultaneously with the repeal of current Subchapter F, consisting of §§23.71 - 23.81. The proposed new Subchapter F is intended to reorganize and consolidate the rules governing violations of inspection requirements and the related administrative penalties and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by vehicle inspection stations and vehicle inspectors with the statutes and regulations pertaining to the safety and emissions inspections of motor vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than 30 days from the date of publication of this proposal.

The new sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Texas Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.61. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA), or in the rules of the Texas Department of Public Safety, the terms used in this chapter have the meanings commonly ascribed to them in the fields of air pollution control and vehicle inspection. In addition to the terms defined by the TCAA, the following words and terms, when used in this chapter, shall have the following meanings:

(1) Lifetime revocation--The withdrawal of the authority granted by the department to inspect vehicles under the certificate of a vehicle inspection station or inspector for the lifetime of the applicant.

(2) Re-education--To provide mandatory additional or remedial training to a vehicle inspector to correct errors observed, or discovered by department personnel. The department representative provides this training on-site, or later, as scheduling permits.

(3) Revocation--The withdrawal of the authority granted by the department to inspect vehicles under the certificate of a vehicle inspection station or inspector for a period of at least three years.

(4) Suspension--A temporary cessation of the authority associated with the certification of a vehicle inspection station, or inspector.

(5) Warning--A written reprimand based on a category A violation, which if repeated will result in a more severe administrative sanction.

§23.62. Violations and Penalty Schedule.

(a) As provided in Texas Transportation Code, §548.405, and in accordance with this section, the department may deny an application for a certificate, revoke or suspend the certificate of a person, vehicle inspection station, or inspector, place on probation, or reprimand a person who holds a certificate.

(b) Pursuant to Texas Transportation Code, §548.405(h) and (i), the department will administer penalties by the category of the violation. The violations listed in this section are not an exclusive list of violations. The department may assess penalties for any violations of Texas Transportation Code, Chapter 548 (the Act), or rules adopted by the department. The attached graphic summarizes the violation categories and illustrates the method by which penalties are enhanced for multiple violations.
Figure: 37 TAC §23.62(b)

(c) Violation categories are as follows:

(1) Category A.

(A) Issuing an inspection certificate without inspecting one or more items of inspection.

(B) Issuing an inspection certificate without requiring the owner or operator to furnish proof of financial responsibility for the vehicle at the time of inspection.

(C) Failure to complete the reverse side of an inspection certificate.

(D) Failure to place an inspection certificate in the proper location on the vehicle.

(E) Issuing out of date, wrong series or type of inspection certificate for vehicle inspected.

(F) Refusing to inspect a vehicle without an objective justifiable cause related to safety.

(G) Failure to properly safeguard inspection certificates, department issued forms, the electronic station interface device, emissions analyzer access/identification card, and/or any personal identification number (PIN).

(H) Failure to maintain required records.

(I) Failure to have at least one certified inspector on duty during the normal working hours of the vehicle inspection station.

(J) Failure to display the official department issued vehicle inspection station sign, certificate of appointment, procedure chart and other notices in a manner prescribed by the department.

(K) Failure to issue certificates in numerical sequence for every vehicle inspected and approved.

(L) Failure to account for an inspection certificate.

(M) Failure to post hours of operation.

(N) Failure to maintain the required facility standards.

(O) Issuing a certificate to a vehicle with one failing item of inspection.

(P) Transferring an inspection certificate from an old windshield to a new windshield on the same vehicle, or failing to properly affix the certificate to the windshield of a passenger vehicle, if one is present.

(Q) Failing to enter information, or entering incorrect vehicle information into an emission analyzer at a vehicle inspection station, where emission testing is required, resulting in reporting of erroneous information concerning the vehicle.

(R) Failing to enter information or entering incorrect vehicle information into the electronic station interface device resulting in the reporting of erroneous information concerning the vehicle.

(S) Failure to conduct an inspection within the inspection area approved by the department for each vehicle type.

(T) Failure of inspector of record to ensure complete and proper inspection.

(U) Issuing an out of state vehicle identification certificate to a vehicle where the inspection certificate is more than 30 days old.

(V) Failure to enter an inspection into the approved interface device at the time of the inspection.

(W) Performing an inspection without a valid driver license.

(X) Conducting an inspection without the appropriate and operational testing equipment.

(Y) Failure to perform a complete inspection and/or issue a rejection receipt.

(Z) Failure to affix or affixing incorrect approved numeral insert to indicate date of issuance or expiration.

(AA) Requiring repair or adjustment not required by the Act, this chapter, or department regulation.

(2) Category B.

(A) Issuing an inspection certificate without inspecting the vehicle.

(B) Issuing inspection certificate to a vehicle with multiple failing items of inspection.

(C) Refusing to allow owner to have repairs or adjustments made at location of owner's choice.

(D) Allowing an uncertified person to perform, in whole or in part, the inspection or rejection of a required item during the inspection of a vehicle.

(E) Charging more than the statutory fee.

(F) Acting in a manner that could reasonably be expected to cause confusion or misunderstanding on the part of an owner or operator presenting a vehicle regarding the relationship between the statutorily mandated inspection fee and a fee for any other service or product offered by the vehicle inspection station.

(G) Failing to list and charge for any additional services separately from the statutorily mandated inspection fee.

(H) Charging a fee, convenience fee or service charge in affiliation or connection with the inspection, in a manner that is false, misleading, deceptive or unauthorized.

(I) Inspector performing inspection while under the influence of alcohol or drugs.

(J) Gross negligence resulting in the failure to safeguard certificates or department issued forms from theft or loss.

(K) Inspecting a vehicle at a location other than the department approved inspection area.

(L) Altering a previously issued inspection certificate, including changing the expiration numeral insert or issuing an inspection certificate removed from another vehicle.

(M) Issuing an inspection certificate, while employed as a fleet or government inspection station inspector, to an unauthorized vehicle. Unauthorized vehicles include those not owned, leased or under service contract to that entity, or personal vehicles of officers and employees of the fleet or government inspection station or the general public.

(N) Preparing or submitting to the department a false, incorrect, incomplete or misleading form or report, or failing to enter required data into the emissions testing analyzer or electronic station interface device and transmitting that data as required by the department.

(O) Issuing an inspection certificate without inspecting multiple inspection items on the vehicle.

(P) Issuing an inspection certificate by using the emissions analyzer access/identification card, the electronic station interface device unique identifier, or the associated PIN of another.

(Q) Giving, sharing, lending or displaying an emissions analyzer access/identification card, the electronic station interface device unique identifier, or divulging the associated PIN to another.

(R) Failure of inspector to enter all required data pertaining to the inspection, including, but not limited to data entry into the emissions testing analyzer, electronic station interface device, inspection certificate or any other department required form.

(S) Conducting multiple inspections outside the inspection area approved by the department for each vehicle type.

(T) Issuing an inspection certificate to a vehicle that is prohibited from receiving a certificate under Texas Transportation Code, §548.104(d).

(U) Vehicle inspection station owner, operator or manager directing a state certified inspector under his employ or supervision to issue a certificate when in violation of this chapter, department regulations, or the Act.

(V) Vehicle inspection station owner, operator, or manager having knowledge of a state certified inspector under the owner's employ or supervision issuing a certificate when in violation of this chapter, department regulations, or the Act.

(3) Category C.

(A) Issuing more than one inspection certificate without inspecting the vehicles.

(B) Issuing inspection certificates to multiple vehicles with multiple failing items of inspection.

(C) Multiple instances of issuing inspection certificates to vehicles with multiple defects.

(D) Emissions testing the exhaust or electronic connector of one vehicle for the purpose of enabling another vehicle to pass the emissions test (clean piping or clean scanning).

(E) Issuing a certificate to a vehicle with multiple emissions related violations or violations on more than one vehicle.

(F) Allowing a person whose certificate has been suspended or revoked to participate in a vehicle inspection, issue an inspection certificate or to participate in the operation of the vehicle inspection station.

(G) Charging more than the statutory fee in addition to not inspecting the vehicle.

(H) Misrepresenting a material fact in any application to the department or any other information filed pursuant to the Act or this chapter.

(I) Conducting or participating in the inspection of a vehicle during a period of suspension, revocation, denial, after expiration of suspension but before reinstatement, or after expiration of inspector certification.

(J) Altering or damaging an item of inspection with the intent that the item fail the inspection.

(4) Category D. These violations are grounds for indefinite suspension based on the temporary failure to possess or maintain an item or condition necessary for certification. The suspension of inspection activities is lifted upon receipt by the department of proof the obstacle has been removed or remedied.

(A) Failing to possess a valid driver license.

(B) Failing to possess a required item of inspection equipment.

(5) Category E. These violations apply to inspectors and vehicle inspection stations in which emissions testing is required.

(A) Failing to perform applicable emissions test as required.

(B) Issuing an emissions inspection certificate without performing the emissions test on the vehicle as required.

(C) Failing to perform the gas cap test, or the use of unauthorized bypass for gas cap test.

(D) Issuing an emissions inspection certificate when the required emissions adjustments, corrections or repairs have not been made after an inspection disclosed the necessity for such adjustments, corrections or repairs.

(E) Falsely representing to an owner or operator of a vehicle that an emissions related component must be repaired, adjusted or replaced in order to pass emissions inspection.

(F) Requiring an emissions repair or adjustment not required by this chapter, department regulation, or the Act.

(G) Tampering with the emissions system or an emission related component in order to cause vehicle to fail emissions test.

(H) Refusing to allow the owner to have emissions repairs or adjustments made at a location of the owner's choice.

(I) Allowing an uncertified person to conduct an emissions inspection.

(J) Charging more than the authorized emissions inspection fee.

(K) Entering false information into an emission analyzer in order to issue an inspection certificate.

(L) Issuing a safety only inspection certificate to a vehicle required to undergo a safety and emissions inspection without requiring a signed and legible affidavit, approved by the department, from the owner or operator of the vehicle, in a non emissions county.

(d) When assessing administrative penalties, the procedures detailed in this subsection will be observed:

(1) Multiple vehicle inspection station violations may result in action being taken against all station licenses held by the owner.

(2) The department may require multiple suspension periods be served consecutively.

(3) Enhanced penalties assessed will be based on previously adjudicated violations in the same category. Any violation of the same category committed after final adjudication of the prior violation will be treated as a subsequent violation for purposes of penalty enhancement.

(A) Category A violations are subject to a two year period of limitations preceding the date of the current violation.

(B) Under Category B, C, and E, subsequent violations are based on the number of previous violations in the same category within the five year period preceding the date of the current violation.

(e) Certification for a vehicle inspection station may not be issued if the person's immediate family member's certification as a vehicle inspection station owner at that same location is currently suspended or revoked, or is subject to a pending administrative adverse action, unless the person submits an affidavit stating the certificate holder who is the subject of the suspension, revocation or pending action, has no, nor will have any, further involvement in the business of state inspections.

(f) A new certification for a vehicle inspection station may be issued at the same location where the previous certificate holder as an owner or operator is pending or currently serving a suspension or revocation, if the person submits an affidavit stating the certificate holder who is the subject of the suspension or revocation, has no, nor will have any, further involvement in the business of state inspections. The affidavit must contain the statement that the affiant understands and agrees that in the event the department discovers the previous certificate holder is involved in the inspection business at that location, the certificate will be revoked under Texas Transportation Code, §548.405. In addition to the affidavit, when the change of ownership of the vehicle inspection station is by lease of the building or the inspection area, the person seeking certification must provide a copy of the lease agreement included with the application for appointment as an official vehicle inspection station.

(g) Reinstatement. After expiration of a period of suspension, reinstatement must be requested by submitting a written application to the department. In addition, the conditions detailed in paragraphs (1) - (4) of this subsection must be met:

(1) all qualifications for appointment;

(2) passing the complete written and demonstration test when required;

(3) submitting the certification fee if certification has expired during suspension; and

(4) paying all charges assessed related to the administrative hearing process, if applicable.

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

Filed with the Office of the Secretary of State on December 12, 2012.

TRD-201206418
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 424-5848

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PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §217.7, concerning Reporting the Appointment and Separation of a Licensee or Telecommunicator. Subsection (d) is amended to change the appointment reporting deadline from thirty days to seven days for those with less than a 180-day break in service. Subsection (e) is amended to add the appointment reporting deadline for those appointed after a 180-day break in service. Subsection (g) is amended to include electronic reporting of telecommunicators. Subsection (g)(1) changes the reporting deadline from thirty days to seven days. Subsection (h) is added which prohibits an agency from submitting a separation report on a licensee prior to the exhaustion of administrative appeals available to the licensee and allows the commission to reject a premature report pending the outcome of the appeal. Subsections (h) - (j) are re-lettered. Re-lettered subsection (k) is amended to reflect the effective date of the changes.

This amendment is necessary to ensure that the commission is notified promptly of new appointments and to prevent separation notices from being sent prior to the exhaustion of all appeals.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that there is prompt notification to the commission of the appointment of individuals to an agency and streamlines the separation process.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small businesses, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.451, Preemployment Request for Employment Termination Report and Submission of Background Check Confirmation Form; §1701.452, Employment Termination Report; and §1701.4521, License Suspension for Officer Dishonorably Discharged.

No other code, article, or statute is affected by this proposal.

§217.7. Reporting the Appointment and Separation of a Licensee or Telecommunicator.

(a) Before a law enforcement agency may hire a person licensed under Texas Occupations Code Chapter 1701, the agency head or the agency head's designee must:

(1) make a request to the commission for any employment termination report(s) regarding the person maintained by the commission under this chapter; and

(2) submit to the commission in a manner prescribed by the commission confirmation that the agency:

(A) conducted in the manner prescribed by the commission a background investigation of the person on a form that meets or exceeds the form prescribed by the commission;

(B) obtained the person's written consent on a form prescribed by the commission for the agency to view the person's employment records;

(C) obtained from the commission any service or education records regarding the person maintained by the commission; and

(D) contacted each of the person's previous law enforcement employers.

(b) A request submitted electronically under this section must contain identifying information, acceptable to the commission, for verification.

(c) A law enforcement agency that obtains a consent form described by subsection (a)(2)(B) of this section shall make the person's employment records available to a hiring law enforcement agency on request.

(d) An agency that appoints an individual with less than a 180-day break in service who already holds a valid, active license appropriate to that position must notify the commission of such appointment not later than seven [~~30~~] days after the date of appointment. The appointing agency must have on file:

(1) documentation that the agency has met the requirements in subsection (a) of this section; and

(2) documentation that a peace officer is compliant with weapons qualification according to §217.21 of this chapter within the last 12 months.

(e) If the appointment is made after a 180-day break in service, the agency must notify the commission of such appointment not later than seven days after the date of appointment. The agency must have the following on file and readily accessible to the commission:

(1) documentation that the agency has met the requirements in subsection (a) of this section;

(2) a new criminal history check by name, sex, race and date of birth from both TCIC and NCIC;

(3) a new declaration of psychological and emotional health;

(4) a new declaration of lack of any drug dependency or illegal drug use;

(5) one completed applicant fingerprint card or, pending receipt of such card, an original sworn, notarized affidavit by the applicant of their complete criminal history; such affidavit to be maintained by the agency while awaiting the return of completed applicant fingerprint card; and

(6) for peace officers, weapons qualification according to §217.21 of this chapter within the last 12 months.

(f) When an individual licensed by the commission separates from appointment with an agency, the agency shall submit a report to the commission and to the licensee in the currently prescribed commission format that reports the separation. The report shall be submitted no later than the seventh business day after the licensee resigns, retires, is terminated, or separates from the agency and if applicable, exhausts all administrative appeals available to the licensee.

(g) Agencies must report the employment and separation of telecommunicators electronically or on a form prescribed by the commission. The reports must be submitted under the following guidelines:

(1) within seven [~~30~~] days of employment; or

(2) no later than the seventh business day after separation and if applicable, after all administrative appeals are exhausted.

(h) An agency shall not submit a separation report prior to a licensee's exhaustion of administrative appeals. The commission may reject and return a prematurely submitted report to the agency pending the appeal's outcome.

(i) [~~(h)~~] An agency must retain records kept under this section for a minimum of five years after the licensee's termination date with that agency. The records must be maintained in a format readily accessible to the commission.

(j) [~~(i)~~] All information submitted under subsection (f) of this section is exempt from disclosure under the Public Information Act, Texas Government Code Chapter 552, unless the individual resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, and is subject to subpoena only in a judicial proceeding.

(k) [~~(j)~~] The effective date of this section is May 2, 2013 [~~July 12, 2012~~].

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

Filed with the Office of the Secretary of State on December 12, 2012.

TRD-201206393
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 936-7713

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CHAPTER 221. PROFICIENCY CERTIFICATES

37 TAC §221.29

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §221.29, concerning Special Investigator Certificate. The title is amended to clarify those investigators that are eligible for the certificate. Subsection (a) removes the certificate's full-time salaried requirement. Subsection (b) is added to limit the certificates validity to two years. Subsection (c) is added to give direction on keeping a certificate valid. Subsection (d) is added to give direction on obtaining a new certificate. Re-lettered subsection (e) is amended to reflect the effective date of the changes.

This amendment is necessary to ensure that officers holding the proficiency certificate are up to date with most current information on training and technology.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section unless an agency chooses to offer supplemental pay for this certificate.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by having highly trained and qualified individuals holding proficiency certificates.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be minimal cost to small businesses, individuals, or both as a result of the proposed section. Individuals may incur a cost to obtain a proficiency certificate.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

§221.29. Sexual Assault/Family Violence [~~Special~~] Investigator Certificate.

(a) To qualify for a sexual assault/family violence [~~special~~] investigator certificate, an applicant must meet all proficiency requirements, including:

(1) at least two years [~~full-time salaried~~] experience as a peace officer;

(2) an intermediate peace officer certificate; and

(3) successful completion of the current family violence and sexual assault investigator certification course(s) reported by the approved training provider.

(b) A certificate is valid for two years.

(c) To keep the certificate valid, the holder must successfully complete an update course or be assigned primarily as a sexual assault/family violence investigator by the appointing chief administrator once every two years.

(d) If the certificate becomes invalid, a holder may obtain a new certificate under the application standards in this section.

(e) [~~(b)~~] The effective date of this section is May 2, 2013 [~~September 1, 2002~~].

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 December 12, 2012.

TRD-201206397
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 936-7713

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37 TAC §221.41

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes new §221.41, concerning Court Security Specialist Certificate. Subsection (a) lists the requirements for the certificate. Subsection (b) limits the certificates validity to two years. Subsection (c) gives direction on keeping a certificate valid. Subsection (d) gives direction on obtaining a new certificate. Subsection (e) reflects the effective date of the new rule.

This new rule is necessary to provide recognition for court security officers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be an effect on state or local governments as a result of administering this section. An agency may choose to offer supplemental pay for this certificate.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by encouraging more court security specialists to be trained.

The Commission has also determined that there may be a positive economic impact for small businesses. Training providers will be able to offer an additional course and may see an increase in business.

The Commission has determined that there will be a monetary and time cost to the individual to achieve this proficiency certificate, however there will be a positive benefit by investigators receiving additional training.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

§221.41. Court Security Specialist Certificate.

(a) To qualify for a court security specialist certificate, an applicant must meet all proficiency requirements, including:

(1) be a licensed peace officer or jailer; and

(2) successful completion of commission approved courses.

(b) A certificate is valid for two years.

(c) To keep the certificate valid, the holder must successfully complete an update course or be assigned primarily as a court security practitioner by the appointing chief administrator once every two years.

(d) If the certificate becomes invalid, a holder may obtain a new certificate under the application standards in this section.

(e) The effective date of this section is May 2, 2013.

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

Filed with the Office of the Secretary of State on December 12, 2012.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 936-7713

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CHAPTER 223. ENFORCEMENT

37 TAC §223.2

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §223.2, concerning Administrative Penalties. New subsection (a) allows the commission to impose administrative penalties against a law enforcement agency or governmental entity for violation of commission statutes or rules. Re-lettered subsection (b) lists factors the commission may use in determining total penalty amounts. New subsection (c) establishes base penalty amounts which can be imposed against a law enforcement agency or governmental entity committing a statute or rule violation. New subsections (d) and (e) set forth aggravating and mitigating circumstances for consideration in determining final penalty amounts. New subsection (f) further explains mitigating factors. New subsection (g) allows the executive director to enter into agreed orders. Re-lettered subsection (h) outlines the commission's responsibilities. New subsection (i) provides the law enforcement agency or governmental entity an opportunity to challenge alleged violations. Re-lettered subsection (j) is amended to reflect the effective date of the changes.

This amendment is necessary to assist the commission in their regulatory duties as outlined in statute.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be an effect on state or local governments as a result of administering this section should an agency be in violation.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that there is compliance by the agencies in following the commission's rules.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small businesses, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.507, Administrative Penalties.

No other code, article, or statute is affected by this proposal.

§223.2. Administrative Penalties.

(a) In addition to any other action or penalty authorized by law, the commission may impose an administrative penalty against a law enforcement agency or governmental entity for violations of commission statutes or rules.

[~~(a) In addition to other penalties imposed by law, a law enforcement agency or governmental entity that violates this chapter or a rule adopted under this chapter is subject to an administrative penalty in an amount set by the commission not to exceed $1,000 per day per violation. The administrative penalty shall be assessed in a proceeding conducted in accordance with Chapter 2001, Texas Government Code.~~]

[~~(b) The commission shall publish an Administrative Penalty Schedule identifying the types of violations subject to administrative penalties and the corresponding penalty range.~~]

(b) [~~(c)~~] In determining total penalty amounts, the commission shall consider: [~~The amount of the penalty shall be based on:~~]

(1) the seriousness of the violation;

(2) the respondent's history of violations;

(3) the amount necessary to deter future violations;

(4) efforts made by the respondent to correct the violation; and

(5) any other matter that justice may require.

(c) The following is a nonexclusive list of the per day per violation base penalty amounts for:

(1) Appointing an unlicensed person as a peace officer or jailer, $1,000;

(2) Appointing as a peace officer or jailer a person disqualified because of criminal history, $1,000;

(3) Appointing a person who does not meet minimum licensing or appointment standards as a peace officer or jailer, $750;

(4) Appointing or continued appointment of a person as a peace officer or jailer with a revoked, suspended, or cancelled license or who is otherwise ineligible for appointment or licensure, $1,000;

(5) Failing to timely submit any required appointment documents, $350;

(6) Failing to timely submit or deliver an F-5 Report of Separation, $350;

(7) Failing to timely submit racial profiling data to the commission, $1,000;

(8) Failing to timely report to the commission the reason(s) a license holder(s) appointed by the law enforcement agency or governmental entity are not in compliance with continuing education standards, $250;

(9) Failing to timely comply with substantive provisions of any order(s) issued under commission statutes or rules, $750;

(10) Failing to timely comply with technical provisions of any order(s) issued under commission statutes or rules, $350;

(11) Failing to timely comply with required audit procedures, $350;

(12) Failing to timely submit or maintain any document(s) as required by commission statutes or rules, $250;

(13) Other noncompliance with commission statutes or rules not involving fraud, deceit, misrepresentation, intentional disregard of governing law, or actual or potential harm to the public or integrity of the regulated community as a whole, $200.

(d) In determining the total penalty amount, the commission may consider the following aggravating factors:

(1) the severity and frequency of violations;

(2) multiple or previous violations;

(3) actual or potential harm to public safety;

(4) actual or potential harm to the public's expectation of commission licensees being trustworthy, demonstrating good-judgment, and maintaining obedience to the law;

(5) whether the violation could constitute criminal activity;

(6) evidence of an intent to defraud, deceive, or misrepresent; and

(7) any other aggravating factors existing in a particular case.

(e) In determining the total penalty amount, the commission may consider the following mitigating factors:

(1) immediacy and degree of corrective action; and

(2) any other matter that justice may require.

(f) The presence of mitigating factors does not constitute a requirement of dismissal of a violation of commission statutes or rules.

(g) Subject to final approval of the commission, the executive director has the discretion to enter into an agreed order. In return for compromise and settlement, the total penalty amount in an agreed order may be calculated using a base amount below those listed in this rule.

(h) [~~(d)~~] The commission will provide written notice to a law enforcement agency or governmental entity of any alleged violations.

[a pending violation. The law enforcement agency or governmental entity must report to the commission in writing within 30 days the steps being taken to correct the violation and on what date the violation will be corrected.]

(i) By written answer, a law enforcement agency or governmental entity may request a hearing challenging the allegations set forth in the notice letter. Failure to file an answer within twenty days after being provided written notice may result in the entry of a default order. The default order may include additional penalties for failing to respond to the notice letter or failing to correct any alleged violations.

[(e) Failure to respond to the written notice or to correct violations identified in subsection (d) of this section may result in the imposition of administrative penalties identified in subsection (b) of this section.]

(j) [(f)] The effective date of this section is May 2, 2013 [January 1, 2012].

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

Filed with the Office of the Secretary of State on December 12, 2012.

TRD-201206400
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 936-7713

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PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 253. DEFINITIONS

37 TAC §253.1

The Texas Commission on Jail Standards proposes an amendment to §253.1, concerning Definitions, in order to add further definitions and to provide clarity.

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

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§253.1. Definitions.

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

(1) Administrative Separation--The assignment of an inmate to a special housing unit, usually a separation or single cell, when staff determines that such close custody is needed for the safety of inmates or staff, for the security of the facility, or to promote order in the facility.

(2) Allied Health Personnel--Licensed health professionals that are involved with the delivery of health-related services pertaining to the identification, evaluation, and prevention of diseases and disorders; dietary and nutrition services; and rehabilitation and health systems management.

(3) [(2)] Capacity--The number of inmates a facility is authorized by the commission to house, excluding holding, detoxification, and violent cells.

(4) [(3)] Commission--Texas Commission on Jail Standards.

(5) [(4)] Control Area--The area inside the security perimeter to which inmates have only controlled access.

(6) [(5)] Control Room--A secured, enclosed room which contains facility door controls, intercom panels and/or fire alarm panels

(7) Correctional Facility--A facility operated by a county, a municipality, or a private vendor for the confinement of a person arrested for, charged with, or convicted of a criminal offense. May be referred to as "facility".

(8) County Jail--A facility operated by or for a county for the confinement of persons accused or convicted of an offense. May be referred to as a "jail" or "facility".

(9) [(6)] Day Room--A space within or adjacent to single cells, multiple occupancy cells, and dormitories specifically for inmate day time activities.

(10) [(7)] Detoxification Cell--A cell designed for the temporary holding of intoxicated persons.

(11) [(8)] Direct Supervision--An inmate supervision management style in which corrections officer(s) are stationed inside a housing unit 24 hours per day.

(12) [(9)] Disabled--Persons who have a physical or mental impairment that substantially limits one or more of the major life activities of such individuals.

(13) [(10)] Dormitory--A cell designed to accommodate nine to 48 inmates.

(14) [(11)] Existing Facility--A maximum security, lockup, or minimum security facility that was being operated as such on December 23, 1976.

(15) [(12)] Guard Station--A designated space from which a corrections officer performs his/her functions.

(16) [(13)] Holding Cell--A cell designed for the temporary holding of inmates not to exceed 48 hours.

(17) [(14)] Inmate Housing Area--Cells and day rooms where inmates are assigned.

(18) [(15)] Inmate Occupied Area--Any area in the facility normally occupied by inmates.

(19) Jailer--A person appointed or employed as a county jailer, under the provisions of Local Government Code §85.005; Government Code §511.0092; Occupations Code §1701.001(2).

(20) [~~(16)~~] May--Permissive or optional.

(21) [~~(17)~~] Multiple Occupancy Cell--A cell designed to accommodate two to eight inmates.

(22) [~~(18)~~] Owner--A county commissioner's court, municipality, or private vendor who holds title to a facility.

(23) [~~(19)~~] Safety Vestibule--An enclosed space, served by at least two doors, that serves as a passageway between two areas.

(24) [~~(20)~~] Sally Port--A secured space inside or abutting a facility for vehicles to deliver or pick up inmates or goods.

(25) [~~(21)~~] Security Perimeter--The outer limits of the facility where construction prevents egress by inmates or ingress by unauthorized persons or contraband.

(26) [~~(22)~~] Separation Cell--A special purpose cell designed to accommodate 1 inmate. The cell minimally contains 1 bunk, mirror, toilet, lavatory, shower, table, and seat. This cell is used to house inmates requiring protection or whose behavior requires close supervision.

(27) [~~(23)~~] Shall--Mandatory and required for compliance.

(28) [~~(24)~~] Sheriff/Operator--County sheriff, jail administrator, or a person authorized to act with their authority.

(29) [~~(25)~~] Should--Recommended but not required for compliance.

(30) [~~(26)~~] Single Cell--A cell designed to accommodate 1 inmate. The cell minimally contains 1 bunk, toilet, lavatory, table and seat.

(31) [~~(27)~~] Small Jail--A facility with a capacity of less than 50 inmates.

(32) [~~(28)~~] Special Purpose Cell--Detoxification cell, holding cell, separation cell, violent cell, negative pressure cell and medical cells. These cells are not required to be provided with day rooms or safety vestibules.

(33) [~~(29)~~] System--A combination of all facilities creating a functional unit.

(34) [~~(30)~~] Violent Cell--A single occupancy padded cell for the temporary holding of inmates harmful to themselves and or others.

(35) [~~(31)~~] Ward--An infirmary area holding a number of inmates.

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 December 13, 2012.

TRD-201206476
Brandon S. Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 463-8236

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CHAPTER 269. RECORDS AND PROCEDURES
SUBCHAPTER B. JAIL POPULATION REPORTS

37 TAC §269.12

The Texas Commission on Jail Standards proposes an amendment to §269.12, concerning Forms, in order to include the agency website for access to population report forms.

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

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§269.12. Forms.

The commission adopts by reference Form PR-1, Monthly Paper Ready Inmate Report, Form PR-2, Monthly Paper-Ready Inmate Roster, and Form POP-2, Jail Population Report. Copies of the forms are available at the offices of the Texas Commission on Jail Standards at 300 West 15th Street, Suite 503, Austin, Texas 78701 or the agency website at www.tcjs.state.tx.us. Each sheriff shall utilize the referenced forms or similar forms, approved by the Executive Director, for submission of monthly reports.

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

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CHAPTER 273. HEALTH SERVICES

37 TAC §273.5

The Texas Commission on Jail Standards proposes an amendment to §273.5, concerning Health Services, in order to delete reference to the CCQ database which is no longer active.

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

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§273.5. Mental Disabilities/Suicide Prevention Plan.

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

(c) Mental History Check. Each jail shall:

(1) check each inmate upon intake into the jail against the Department of State Health Services CARE [~~or CCQ~~] system to determine if the inmate has previously received state mental healthcare, unless the inmate is being housed as an out of state inmate or a federal inmate on a contractual basis;

(2) maintain documentation to be available at the time of inspection showing that information for each inmate designated in paragraph (1) of this subsection was submitted for CARE [~~or CCQ~~] system checks; and

(3) (No change.)

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

Filed with the Office of the Secretary of State on December 13, 2012.

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Brandon S. Wood
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-8236

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CHAPTER 279. SANITATION

37 TAC §279.1

The Texas Commission on Jail Standards proposes an amendment to §279.1, concerning Sanitation, in order to clarify the requirement that each sanitation plan must be reviewed and to allow the utilization of public water and sewage systems.

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

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§279.1. Sanitation Plan.

Each facility shall have and implement a written plan, reviewed and approved by the commission, for the maintenance of an acceptable level of cleanliness and sanitation throughout the facility. Such plan shall provide for:

(1) (No change.)

(2) water and sewage systems not part of a public [~~city~~] system and food preparation areas shall be inspected at least annually by health authorities and record kept for each inspection;

(3) - (10) (No change.)

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

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Brandon S. Wood
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CHAPTER 283. DISCIPLINE AND GRIEVANCES

37 TAC §283.1

The Texas Commission on Jail Standards proposes an amendment to §283.1, concerning Discipline and Grievances, in order to allow for the sanction of restitution as part of the approved disciplinary plan.

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

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§283.1. Inmate Discipline Plan.

Each sheriff/operator shall develop and implement a written disciplinary plan, approved by the Commission, governing inmate conduct. The plan shall provide for the firm, fair, and consistent application of rules and regulations. Facilities housing contracted TDCJ-ID inmates may adhere to TDCJ-ID disciplinary policies and procedures for these inmates, when they are housed together, and separately from all other inmates. Facilities housing federal inmates may adhere to federal disciplinary policies and procedures for these inmates, when they are housed together, and separately from all other inmates. For purposes of inmate discipline, violations of institutional rules and regulations shall be divided into Minor Infractions and Major Infractions.

(1) Minor Infractions. Violations of rules and regulations which do not represent serious offenses against persons and do not pose a serious threat to institutional order and safety. Sanctions shall be limited to:

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

(D) loss of privileges for a period not to exceed fifteen days; [~~and~~]

(E) disciplinary separation for a period not to exceed fifteen days; and[~~.~~]

(F) restitution for damage to jail property.

(2) Major Infractions. Violations of rules and regulations which constitute serious offenses against persons and property and pose a serious threat to institutional order and safety. Sanctions may include:

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

(C) removal from work details or programs; [~~and~~]

(D) disciplinary separation for a period not to exceed thirty days; and[~~.~~]

(E) restitution for damage to jail property.

(3) - (4) (No change.)

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

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CHAPTER 297. COMPLIANCE AND ENFORCEMENT

37 TAC §297.8

The Texas Commission on Jail Standards proposes an amendment to §297.8, concerning Remedial Order by Commission, in order to self-initiate the review of an order by the commission upon the issuance of a certificate of compliance.

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

Mr. Wood has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Diana Spiller, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§297.8. Remedial Order by Commission.

(a) - (d) (No change.)

(e) Upon the issuance of a Certificate of Compliance, the remedial order shall be reviewed at the next regularly scheduled meeting of the Commission.

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

Filed with the Office of the Secretary of State on December 13, 2012.

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Brandon S. Wood
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 105. AUTISM PROGRAM

40 TAC §§105.101, 105.103, 105.105, 105.107, 105.109, 105.111, 105.113, 105.115, 105.117, 105.119, 105.121, 105.123, 105.125, 105.127, 105.129, 105.131, 105.133

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes new DARS rules in Texas Administrative Code, Title 40, Part 2, Chapter 105, §§105.101, 105.103, 105.105, 105.107, 105.109, 105.111, 105.113, 105.115, 105.117, 105.119, 105.121, 105.123, 105.125, 105.127, 105.129, 105.131, and 105.133, concerning the Autism Program.

BACKGROUND AND PURPOSE

In August 2007, the Legislative Budget Board, in conjunction with the Office of the Governor, instructed the Texas Health and Human Services Commission (HHSC) to fund services to children with autism. In turn, HHSC directed DARS to implement Autism services, which include applied behavioral analysis (ABA) for children ages three through eight. Funding for the program was extended by the Texas Legislature, and the DARS Autism Program continues to support excellence in the delivery of services for families of children with autism. Services are provided through grant contracts with local community agencies and organizations that provide ABA and other positive behavior support strategies. The DARS Autism Program helps improve the quality of life for children on the autism spectrum and their families.

SECTION-BY-SECTION SUMMARY

Section 105.101 states the purpose of the Autism Program; §105.103 states the legal authority for the subchapter; §105.105 contains definitions for terms used in the subchapter; §105.107 sets out the eligibility requirements for the Autism Program; §105.109 outlines the enrollment process followed by grant contractors; §105.111 states the rights of children and families; §105.113 outlines the complaints process under the Autism Program; §105.115 describes the services grant contractors must provide to children in the Autism Program; §105.117 addresses the length of services for children in the Autism Program; §105.119 describes the fee schedule provided by DARS and used by contractors, along with cost share; §105.121 states the limitations on cost for each child in the Autism Program; §105.123 states that DARS is the payer of last resort; §105.125 describes the qualifications Autism Program contractor staff must have; §105.127 describes the process for criminal background checks by contractors in the Autism Program; §105.129 describes how DARS monitors each contractor and the contractor's role in the performance management process; §105.131 states the safety standard for contractors in the Autism Program; and §105.133 states how contractors and subcontractors will secure the confidentiality of all consumer information under applicable state and federal laws and DARS contract requirements.

FISCAL NOTE

Mary Wright, Chief Financial Officer at DARS, has determined that for each year of the first five years that the proposed new rules will be in effect, there are no foreseeable fiscal implications to either cost of revenues of state or local governments because of enforcing or administering the rules.

SMALL AND MICRO-BUSINESS ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

In accordance with Texas Government Code §2001.022, Ms. Wright has determined that the proposed new rule will have no affect on local economy, and, therefore, no local employment impact statement is required. Ms. Wright has further determined that the proposal will have no adverse economic effect on small businesses or micro-businesses.

PUBLIC BENEFIT

Ms. Wright has determined that the public benefit anticipated as a result of administering and enforcing the new rules will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the DARS Autism Program. Ms. Wright has also determined that there is no probable economic cost to persons who are required to comply with the proposal.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposed new rules may be submitted within 30 days of publication of this proposal in the *Texas Register* to Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 150A-2, Austin, Texas 78756 or electronically to DARSRules@dars.state.tx.us.

STATUTORY AUTHORITY

The new rules are proposed 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.

The new rules affect Government Code, Chapter 531.

§105.101. Purpose.

The purpose of the Autism Program is to provide applied behavior analysis (ABA) services to children with an autism spectrum disorder. Services are provided through grant contracts with local community agencies and organizations that provide ABA services. The Department of Assistive and Rehabilitative Services (DARS) is authorized to implement the program only to the extent that funds are appropriated by the Texas Legislature.

§105.103. Legal Authority.

The following statutes authorize the funding and rules for this program:

(1) Human Resources Code, §111.051.

(2) Government Code, §531.0055.

§105.105. Definitions.

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

(1) Applied behavior analysis (ABA)--The process of using behavioral principles to evaluate and teach socially relevant behavior, teach new skills, and increase desirable behaviors.

(2) Autism spectrum disorders--The disorders found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) related to autism.

(3) Contractor--A service provider under contract to DARS to provide autism services.

(4) Cost share--The amount of monthly financial contribution required of a family for a child to participate in the program, as described in §105.119 of this chapter (relating to Fee Schedule and Cost Share).

(5) DARS--Texas Department of Assistive and Rehabilitative Services.

(6) Interest list--A list, maintained by the contractor, of families who have indicated an interest in receiving services and who meet the eligibility criteria.

(7) Qualified professional--A physician or psychologist with training and background related to the diagnosis and treatment of neurodevelopmental disorders.

(8) Third-party payer--A company, organization, insurer, or government agency other than DARS that makes payment for health care services received by an enrolled child.

§105.107. Eligibility.

(a) To be eligible for services in this program, a child must:

(1) be a Texas resident;

(2) be three through eight years of age (children become eligible on their third birthday and become ineligible on their ninth birthday); and

(3) have a documented diagnosis on the autism spectrum made by a qualified professional.

(b) Eligibility for services in this program does not guarantee enrollment into the program. A child considered eligible for services by the contractor based on the above criteria is added to the contractor's interest list.

§105.109. Enrollment.

(a) The contractor must:

(1) enroll eligible children, as defined in §105.107 of this chapter (relating to Eligibility), in the program in accordance with provisions of the contract established between the contractor and DARS.

(2) provide information to families regarding the estimated amount of cost share that will be required for payment of services based on the fee schedule described in §105.119 of this chapter (relating to Fee Schedule and Cost Share).

(3) verify benefits for all children identified with potential third-party payer coverage and maintain related documentation on file.

(4) provide information to the family regarding the nature of the third-party payer coverage, or lack thereof, and the applicability of the fee schedule.

(b) An offer of enrollment into the program is based on the continued availability of funding and contractor capacity.

§105.111. Rights of Children and Families.

In accordance with applicable legal provisions, the Autism Program does not, directly or through contractual or other arrangements, exclude, deny benefits, limit participation, or otherwise discriminate against any person on the basis of age, color, disability, national origin, political belief, race, religion, sex, or sexual orientation. For purposes of this program, the child must have an autism spectrum disorder, and that requirement is not considered discrimination against any person on the basis of disability.

§105.113. Complaint Process.

(a) A family may file a complaint in writing to the DARS Autism Program Director, Department of Assistive and Rehabilitative Services, 4800 North Lamar, Austin, Texas 78756. Or, a family may call DARS Inquiries at 1-800-628-5115 or send an email to: dars.inquiries@dars.state.tx.us.

(b) DARS staff members receive, evaluate, and seek satisfactory resolution to each complaint received.

(c) On each complaint under this chapter, DARS maintains a record containing the name of the person filing the complaint, the date the complaint was received, the subject matter of the complaint, the name of each person contacted concerning the complaint, a summary of the informal review, and an explanation of the reason the file was closed if DARS closed the file without taking action other than to investigate the complaint.

§105.115. Services Provided.

The contractor must:

(1) provide services to enrolled children on the autism spectrum using ABA. Physically aversive interventions that would result in pain or discomfort are not permitted.

(2) develop a treatment plan for each child served.

(3) offer parent training as a component of the services.

(4) provide ongoing analysis and evaluation of each child's progress.

(5) document services provided to each child.

(6) administer pre- and posttreatment measures in accordance with contractual procedures established between the contractor and DARS.

(7) create and maintain documented transition plans for each child leaving the program.

§105.117. Length of Services.

(a) Length of services for a child is based on the child's specific needs not to exceed a maximum of 24 months in the Autism Program, not all of which must be consecutive.

(b) A change in the contract between DARS and its contractors, or a change in the contractor, does not restart the maximum 24 months of service.

(c) Any child who leaves the program before receiving 24 months of service cannot be reenrolled within six months of leaving without prior written approval from DARS.

(d) A family may choose, at its own expense, for a child to continue receiving services from the contractor after 24 months. DARS is not liable for any costs incurred after the maximum 24 months of service is completed. DARS does not assume any liability for services continued after the maximum 24 month eligibility period, to include any costs incurred by a contractor providing said services.

§105.119. Fee Schedule and Cost Share.

(a) The contractor is required to use the fee schedule and instructions provided by DARS to calculate the amount of monthly cost share owed by the family for the services of each eligible child, regardless of the availability of private insurance or other third-party payer reimbursements. The family's obligation for payment of any deductible, co-payment, or coinsurance is limited to the monthly cost share amount.

(b) Factors that affect the amount of monthly cost share include the:

(1) monthly costs of services provided by the contractor as determined by the number of hours of service provided multiplied by the hourly rate between DARS and the contractor.

(2) gross annual income of the family as determined by the federal tax return from the previous year.

(3) family size calculated by summing the number of custodial parents plus all minor siblings residing in the home.

(4) number of children from a single family who are enrolled in the program. Cost share for a single family with multiple children in service must be calculated for each child monthly. The family will owe 100 percent of the highest cost share amount for one child and 50 percent of each additional child's cost share.

(c) Information about DARS procedures and fee schedules used to administer the Autism Program are available on the DARS website and for viewing at DARS, 4800 North Lamar Boulevard, Austin, Texas, between 8:00 a.m. and 5:00 p.m. on workdays.

(d) The contractor is required to bill and collect cost share amounts and amounts owed by other responsible parties. DARS funds must not be used to pay for any portion of the required cost share.

§105.121. Limitation on Cost Per Child.

The total cost of ABA services provided to any one child during a month may not exceed $5,000.00 without prior written approval by DARS. The total cost of services is determined by the number of treatment hours a child received during a month multiplied by the hourly rate between DARS and the contractor.

§105.123. Payer of Last Resort.

To the extent that the family or child is entitled to the covered services or receives payment for the covered services from other governmental programs, third-party payers, or other private sources, DARS funds must not be used to pay for the services.

§105.125. Staff Qualifications.

Contractor staff members who provide assessment and oversee treatment of children, and who train and supervise paraprofessional personnel involved in direct service delivery must have:

(1) a master's degree from an accredited institution of higher education in psychology, behavior analysis, or a related field.

(2) documented graduate-level coursework in behavioral assessment and intervention, selecting outcomes and strategies, behavior change procedures, experimental methods, and measuring and interpreting behavioral data.

(3) at least one year of experience in providing services to children on the autism spectrum.

§105.127. Criminal Background Checks.

(a) The contractor must complete a fingerprint-based review of national criminal history records on any employee, volunteer, or other person who will have direct contact with children and families served by this program.

(b) Offenses that disqualify an employee, volunteer, or other person who will have direct contact with children and families served are outlined in the contracts established between DARS and its contractors.

(c) Under certain circumstances, DARS may allow the contractor to conduct an evaluation of risk on a person to determine the person's suitability for employment despite a minor criminal history finding.

§105.129. Performance Management.

(a) DARS monitors each contractor's performance for:

(1) compliance with contract terms and conditions, including any amendments;

(2) compliance with DARS rules, policies, and procedures;

(3) other requested contractor reporting;

(4) identified areas of associated risk; and

(5) other issues that require special attention and monitoring as determined by DARS.

(b) The contractor must fully participate in the performance management process by:

(1) responding to requests by due dates established by DARS;

(2) implementing corrective actions or system changes when requested;

(3) participating in on-site reviews; and

(4) participating in technical assistance and training activities.

§105.131. Safety.

The contractor must maintain an emergency evacuation plan at the contractor's service site that complies with all applicable local, state, and federal laws, rules, and regulations governing provision of services under this chapter.

§105.133. Confidentiality of Information.

The contractor and any of its subcontractors associated with this program must establish and maintain a method to secure the confidentiality of all consumer information and records in accordance with applicable federal and state laws, rules and regulations, and DARS contract requirements. This provision does not limit DARS' right of access to consumer case records or other information relating to consumers served under this program.

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

Filed with the Office of the Secretary of State on December 17, 2012.

TRD-201206506
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 424-4050

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CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes the repeal of rules in the Texas Administrative Code, Title 40, Part 2, Chapter 109, Office for Deaf and Hard of Hearing Services, Subchapter A, §§109.101, 109.103, 109.105, 109.107, and 109.109, concerning General Rules; Subchapter B, §§109.203, 109.205, 109.207, 109.221, 109.223, 109.225, 109.227 - 109.229, 109.231, 109.233, 109.235, and 109.237, concerning Board for Evaluation of Interpreters (BEI) General Certificate; Subchapter C, §§109.303, 109.305, 109.311, 109.323, 109.325, 109.337, 109.339, 109.361, 109.363, 109.365, 109.367, 109.371, and 109.373, concerning Certified Court Interpreters General Rules; Subchapter D, §§109.401, 109.403, 109.405, 109.407, 109.409, 109.411, 109.413, 109.415, and 109.417, concerning Specialized Telecommunications Assistance Program; Subchapter E, §109.501 and §109.503, concerning Certified Trilingual Interpreters; and Subchapter F, §§109.601, 109.603, 109.605, 109.607, 109.609, and 109.611, concerning Deaf and Hard of Hearing Driver Identification Program. DARS also proposes, as replacement of the repealed rules and/or the subject matter of the rules, new rules and divisions in Chapter 109, Office for Deaf and Hard of Hearing Services, Subchapter A, General Rules, §§109.101, 109.103, 109.105, 109.107, and 109.109; Subchapter B, Board for Evaluation of Interpreters, Division 1, BEI Interpreter Certification, §§109.201, 109.203, 109.205, 109.207, 109.209, 109.211, 109.213, 109.215, 109.217, 109.219, 109.221, 109.223, 109.225, 109.227, and 109.229; Division 2, BEI Court Interpreter Certification, §§109.301, 109.303, 109.305, 109.307, 109.309, 109.311, 109.313, 109.315, 109.317, 109.319, 109.321, 109.323, 109.325, 109.327, 109.329, and 109.331; Division 3, BEI Trilingual Certification, §§109.401, 109.403, and 109.405; Subchapter C, Specialized Telecommunications Assistance Program, §§109.501, 109.503, 109.505, 109.507, 109.509, 109.511, 109.513, 109.515, 109.517, and 109.519; Subchapter D, Deaf and Hard of Hearing Driver Identification Program, §§109.601, 109.603, 109.605, 109.607, and 109.609; and Subchapter E, Certificate of Deafness for Tuition Waiver Program, §§109.701, 109.703, 109.705, 109.707, and 109.709.

The repeals and new rules are being proposed as the result of the four-year rule review that DARS conducted of the rules in Chapter 109, Office for Deaf and Hard of Hearing Services, in accordance with Texas Government Code §2001.039. Elsewhere in this issue of the *Texas Register,* DARS contemporaneously proposes the rule review of Chapter 109. As a result of the review, DARS determined that the reasons for originally adopting the rules continue to exist. However, DARS determined that Chapter 109 needed language revisions and reorganization, including renumbering and revision to be consistent with DARS' rules writing style, to align rules with statutes and current operations, and to delete rules that are no longer necessary.

SECTION-BY-SECTION SUMMARY

In Subchapter A, General Rules, DARS added legal authority and purpose sections to the definitional section in accordance with the structure and format of all DARS rules.

In Subchapter B, Board for Evaluation of Interpreters, DARS reorganized all Board for Evaluation of Interpreter (BEI)-related materials in Chapter 109, which required Subchapters C and E to be repealed and replaced with three new Divisions. Subchapter B, Division 1, concerns BEI Interpreter Certification; Subchapter B, Division 2, concerns BEI Court Interpreter Certification; and Subchapter B, Division 3, concerns BEI Trilingual Certification.

The repeal and reorganization of these subchapters required DARS to repeal Subchapter D, Specialized Telecommunications Assistance Program, and propose replacement Subchapter C, Specialized Telecommunications Assistance Program, with new rules. Proposed new Subchapter C contains new definitions, provides for the process of determining voucher category value and eligibility criteria for a voucher category; provides for preliminary and comprehensive assessment to determine eligibility criteria for a voucher; provides for the removal of certifying individuals based on violations related to the program; and provides that vouchers are financial assistance and may not cover the full price of a device.

The repeal and reorganization of these rules required DARS to repeal Subchapter F, Deaf and Hard of Hearing Driver Identification Program, and propose replacement Subchapter D, Deaf and Hard of Hearing Driver Identification Program.

As a result of the four-year rule review, DARS added new Subchapter E, to establish and provide for the Certificate of Deafness for Tuition Waiver Program.

FISCAL NOTE

Mary Wright, DARS Chief Financial Officer, has determined that for each year of the first five years that the repeals and new rules will be in effect, there are no foreseeable fiscal implications to either cost of revenues of state or local governments because of enforcing or administering the rules.

SMALL AND MICRO-BUSINESS ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Further, in accordance with Texas Government Code §2001.022, Ms. Wright has determined that the proposal will have no effect on local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the proposal will have no adverse economic effect on small businesses or micro-businesses.

PUBLIC BENEFIT

Ms. Wright also has determined that for each year of the first five years the public benefit anticipated as a result of administering and enforcing the repeals and new rules will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the services provided by the Office for Deaf and Hard of Hearing Services. Ms. Wright has also determined that there is no probable economic cost to persons who are required to comply with the proposal.

REGULATORY ANALYSIS

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

proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

DARS has determined that these proposed new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted within 30 days of publication of this proposal in the *Texas Register* to Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 150A-2, Austin, Texas 78756 or electronically to DARSRules@dars.state.tx.us.

SUBCHAPTER A. GENERAL RULES

40 TAC §§109.101, 109.103, 109.105, 109.107, 109.109

(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 Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are being proposed under the authority of Texas Human Resources Code, Chapters 81 and 117, and 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.

No other statute, article, or code is affected by this proposal.

§109.101. Definitions.
§109.103. Specialized License Plate Program.
§109.105. Training Fees, Gifts, Grants, or Donations.
§109.107. Trilingual Interpreter Services.
§109.109. Examination Accommodations for Persons with Dyslexia.

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 December 17, 2012.

TRD-201206507
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 424-4050

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SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS (BEI) GENERAL CERTIFICATE

40 TAC §§109.203, 109.205, 109.207, 109.221, 109.223, 109.225, 109.227 - 109.229, 109.231, 109.233, 109.235, 109.237

(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 Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are being proposed under the authority of Texas Human Resources Code, Chapters 81 and 117, and 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.

No other statute, article, or code is affected by this proposal.

§109.203. Obtaining Documents and Information from the Office.
§109.205. Registry of Qualified Interpreters.
§109.207. Guidelines Concerning Qualification of Interpreters.
§109.221. Board for Evaluation of Interpreters.
§109.223. Provisional Certificate.
§109.225. Compensation of Evaluators.
§109.227. Certification.
§109.228. Qualifications and Requirements for Board for Evaluation of Interpreters (BEI) General Certificate.
§109.229. Administration of Examination for Court Interpreter Certification.
§109.231. Validity of Certificates and Recertification.
§109.233. Certificate Renewal.
§109.235. Continuing Education Programs.
§109.237. Disciplinary Actions.

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

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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 C. CERTIFIED COURT INTERPRETERS GENERAL RULES

40 TAC §§109.303, 109.305, 109.311, 109.323, 109.325, 109.337, 109.339, 109.361, 109.363, 109.365, 109.367, 109.371, 109.373

(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 Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are being proposed under the authority of Texas Human Resources Code, Chapters 81 and 117, and 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.

No other statute, article, or code is affected by this proposal.

§109.303. Requirements for Interpreting Court Proceedings in Courts of the State of Texas.

§109.305. Responsibilities of Certified Court Interpreters.

§109.311. Obtaining Documents and Information from the Office.

§109.323. Qualifications of Certified Court Interpreters.

§109.325. Training Programs for Certified Court Interpreters Managed by the Department or by Public or Private Educational Institutions.

§109.337. Instructions for the Compensation of a Certified Court Interpreter and Designation of the Party or Entity Responsible for Payment of Compensation.

§109.339. Administrative Sanctions Enforceable by the Department.

§109.361. Prohibited Acts.

§109.363. Enforcement.

§109.365. Criminal Offense.

§109.367. Actions Against Persons Not Certified as Court Interpreters.

§109.371. Court Interpreter Qualifications in Civil Cases or Depositions Pursuant to Civil Practice and Remedies Code.

§109.373. Court Interpreter Qualifications in Criminal Actions Pursuant to Code of Criminal Procedure.

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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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 D. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM

40 TAC §§109.401, 109.403, 109.405, 109.407, 109.409, 109.411, 109.413, 109.415, 109.417

(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 Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are being proposed under the authority of Texas Human Resources Code, Chapters 81 and 117, and 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.

No other statute, article, or code is affected by this proposal.

§109.401. Purpose.

§109.403. Statutory Authority.

§109.405. Definitions.

§109.407. Determination of Basic Equipment or Service.

§109.409. Eligibility.

§109.411. Persons Authorized to Certify Disability.

§109.413. Vouchers.

§109.415. Determination of Voucher Value.

§109.417. Consumer 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 December 17, 2012.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 424-4050

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SUBCHAPTER E. CERTIFIED TRILINGUAL INTERPRETERS

40 TAC §109.501, §109.503

(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 Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are being proposed under the authority of Texas Human Resources Code, Chapters 81 and 117, and 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.

No other statute, article, or code is affected by this proposal.

§109.501. Qualifications and Requirements for Trilingual Certification.

§109.503. Disciplinary Actions, Complaints, and Other Conditions Impacting the Validity of a Trilingual Certification.

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

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TRD-201206511
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 424-4050

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SUBCHAPTER F. DEAF AND HARD OF HEARING DRIVER IDENTIFICATION PROGRAM

40 TAC §§109.601, 109.603, 109.605, 109.607, 109.609, 109.611

(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 Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are being proposed under the authority of Texas Human Resources Code, Chapters 81 and 117, and 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.

No other statute, article, or code is affected by this proposal.

§109.601. Purpose.
§109.603. Statutory Authority.
§109.605. Definitions.
§109.607. Eligibility.
§109.609. Deaf and Hard of Hearing Driver Visor Identification Card.
§109.611. Consumer 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.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 424-4050

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SUBCHAPTER A. GENERAL RULES

40 TAC §§109.101, 109.103, 109.105, 109.107, 109.109

STATUTORY AUTHORITY

The new rules are being proposed under the authority of Texas Human Resources Code, Chapters 81 and 117, and 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.

No other statute, article, or code is affected by this proposal.

§109.101. Purpose.

The purpose of this subchapter is to set out the administration and general procedures governing the various programs of the Office for Deaf and Hard of Hearing Services.

§109.103. Legal Authority.

The Office for Deaf and Hard of Hearing Services implements its general powers and duties under the following statutes:

(1) Human Resources Code, Chapter 81;

(2) Utilities Code, Chapter 56, Subchapter E;

(3) Government Code, Chapter 57;

(4) Civil Practice and Remedies Code, §21.003; and

(5) Code of Criminal Procedure, Art. 38.31(g).

§109.105. Definitions.

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

(1) Americans with Disabilities Act (ADA)--A public law that provides a clear and comprehensive national mandate for eliminating discrimination against people with disabilities and that provides enforceable standards addressing discrimination against people with disabilities.

(2) BEI--The Board for Evaluation of Interpreters.

(3) BEI Certificate--The certificate awarded by DARS to an applicant who has passed designated written and performance tests; the certificate verifies that the person has skills to perform interpreting and transliterating, both expressively and receptively, and specifies the skill level at which the person can perform.

(4) Certified court interpreter--A person who is a qualified interpreter as defined in the Code of Criminal Procedure, Article 38.31, or the Civil Practice and Remedies Code, §21.003 or who is certified under Subchapter B of this chapter (relating to Board for Evaluation of Interpreters) by DARS to interpret court proceedings for a person who is deaf or hard of hearing.

(5) Certified interpreter--A person who holds a valid certificate awarded by DARS or RID. A RID-certified interpreter does not include a certified interpreter awarded through membership.

(6) Certified trilingual interpreter--A person certified under Subchapter B of this chapter as meeting the proficiency standards established by DARS to facilitate communication both expressively and receptively in English, sign, and Spanish.

(7) DARS--The Department of Assistive and Rehabilitative Services.

(8) DHHS--The Office for Deaf and Hard of Hearing Services, Division for Rehabilitation Services, DARS.

(9) Director--The director of the Office for Deaf and Hard of Hearing Services.

(10) Intermediary interpreter--A person who is deaf or hard of hearing, who has passed an interpreter skills evaluation and is certified by DARS or RID, and who is proficient at facilitating communication both linguistically and culturally for a person who is deaf or deafblind.

(11) Interpretation--The process of conveying a message both expressively and receptively from verbal/written language to sign or from sign to verbal/written language.

(12) Interpreter or qualified interpreter--A person who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.

(13) Prerequisite certificate--The valid certificate required by DHHS that makes a person eligible to apply for a specialized certificate issued by DARS or to apply for a BEI advanced performance test.

(14) Provisional certificate--The certificate awarded by DARS to an applicant currently certified in another jurisdiction who seeks a certificate in Texas.

(15) RID--Registry of Interpreters for the Deaf, Inc., a national organization of interpreters that provides interpreter certification.

(16) Specialty certificate--A trilingual certificate or court certificate awarded by DARS.

(17) Transliteration--The process of conveying a message either from spoken language into a manually coded language or from manually coded language into a spoken language.

§109.107. Registry of Qualified Interpreters.

(a) DHHS maintains a registry of available qualified BEI interpreters for people who are deaf or hard of hearing. The registry is updated at least quarterly and is available on request at cost.

(b) DARS maintains lists of certified court interpreters and other persons whom DARS has determined are qualified to act as court interpreters.

(c) DHHS sends a list of certified court interpreters and other persons whom DARS has determined are qualified to act as court interpreters to each state court.

(d) Copies of qualified interpreter lists may be obtained from DHHS upon request.

§109.109. Guidelines Concerning Qualification of Interpreters.

DHHS has developed guidelines to clarify the circumstances under which interpreters certified by DARS are qualified to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Copies of the guidelines may be obtained from DHHS.

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 December 17, 2012.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 424-4050

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SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS

DIVISION 1. BEI INTERPRETER CERTIFICATION

40 TAC §§109.201, 109.203, 109.205, 109.207, 109.209, 109.211, 109.213, 109.215, 109.217, 109.219, 109.221, 109.223, 109.225, 109.227, 109.229

STATUTORY AUTHORITY

The new rules are being proposed under the authority of Texas Human Resources Code, Chapters 81 and 117, and 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.

No other statute, article, or code is affected by this proposal.

§109.201. Purpose.

The purpose of this division is to set out the administration and general procedures governing the certification of interpreters for people who are deaf or hard of hearing in Texas.

§109.203. Legal Authority.

The Board for Evaluation of Interpreters program is specifically created under authority of the Human Resources Code, §81.007, with additional statutory authority generally contained in Human Resources Code, Chapter 81, and Government Code, Chapter 57.

§109.205. Definitions.

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

(1) BEI Board--The seven-person advisory board appointed by the executive commissioner of HHSC, or his or her designee, to assist in administering the BEI.

(2) Certificates issued--

(A) Basic certificate--A certificate issued by DARS to a person who has passed a written test of English proficiency and a skills evaluation ensuring a minimum competency standard to interpret in routine educational and social service settings.

(B) Advanced certificate--A certificate issued by DARS to a person who has passed a written test of English proficiency and a skills evaluation ensuring a minimum competency standard to interpret in a variety of complex settings, such as routine medical, social service, K-12 and higher education, routine mental health, and routine quasi-legal.

(C) Master certificate--A certificate issued by DARS to a person who has passed a written test of English proficiency and a skills evaluation ensuring a minimum competency standard to interpret in a variety of highly complex settings, such as medical, mental health, quasi-legal, and educational settings.

(D) Court certificate--A certificate issued by DARS to a person who has passed a skills evaluation certifying that the person is qualified to interpret all proceedings of Texas courts, including county, municipal, and justice courts.

(E) Intermediary--Level III certificate--A certificate issued by DARS to a person who is deaf or hard of hearing who has passed a skills evaluation certifying that the person possesses the ability to interpret for a wide range of communication styles, which may include but, not limited to non-standard signs/gestures, limited com-

munication skills, characteristics of Deaf Culture that may not be familiar to hearing interpreters, deaf-blind, minimal language skills, and indigenous communication.

(F) Intermediary--Level V certificate--A certificate issued by DARS to a person who is deaf or hard of hearing who has passed a skills evaluation certifying that the person possesses the ability to interpret in a variety of settings and situations requiring extensive knowledge and training in specialized fields including, but not limited to mental health/psychiatric, medical/surgical, court/legal and matters involving juveniles, demonstrates near flawless skills in interpreting for a wide range of communication styles, which can include-but not limited to non-standard signs/gestures, limited communication skills, characteristics of Deaf Culture that may not be familiar to hearing interpreters, deaf-blind, minimal language skills, and indigenous communication.

(G) Oral Certificate: Basic (OC:B) certificate--A certificate issued by DARS to a person who has passed a skills evaluation in spoken-to-visible and visible-to-spoken communication, certifying that the person has basic proficiency in oral transliteration and speechreading.

(H) Oral Certificate: Comprehensive (OC:C) certificate--A certificate issued by DARS to a person who has passed a skills evaluation in spoken-to-visible and visible-to-spoken communication, certifying that the person has advanced proficiency in oral transliteration and speechreading.

(I) Oral Certificate: Visible (OC:V) certificate--A certificate issued by DARS to person who is deaf or hard of hearing and who has passed a skills evaluation in visible-to-spoken communication, certifying that the person has advanced proficiency in oral transliteration and speechreading.

(J) Trilingual Advanced certificate--A certificate issued by DARS to a person who has passed a written test of Spanish proficiency and a skills evaluation certifying that the person has the ability to meaningfully and accurately understand, produce, and transform ASL to and from English and Spanish in a culturally appropriate manner, in more complex situations for routine educational and social service settings, such as K-12 educational and administrative interactions.

(K) Trilingual Master certificate--A certificate issued by DARS to a person who has passed a written test of Spanish proficiency and a skills evaluation certifying that the person has the ability to meaningfully and accurately understand, produce, and transform ASL to and from English and Spanish in a culturally appropriate manner, in the most complex situations including complex medical, complex mental health, quasi-legal, and educational settings.

(L) Morphemic Sign System (MSS) certificate--A certificate issued by DARS to a person who has passed a skills evaluation certifying that the person can convey a message from verbal English into morphemic signs for English and from morphemic signs for English into verbal English.

(M) Signing Exact English (SEE) certificate--A certificate issued by DARS to a person who has passed a skills evaluation certifying that the person can convey a message from verbal English into Signed Exact English and from Signed Exact English into verbal English.

(N) Level I certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person can convey some daily interpreting situations where expressive skills are usually stronger than receptive skills and sign vocabulary is limited.

(O) Level II certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person can convey some routine interpreting situations where the person exhibits good transliterating or interpreting skills, but not both.

(P) Level III certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person can convey most routine interpreting situations where the person exhibits good expressive and receptive interpreting skills, displays a clear distinction between interpreting and transliterating and possess a sign vocabulary.

(Q) Level IV certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person exhibits strong expressive and receptive interpreting skills in settings such as medical, legal and psychiatric, demonstrates excellent use of ASL grammar and ASL features, transliterating skills are strong and processing is often at the textual level.

(R) Level V certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person exhibits very strong expressive and receptive interpreting skills in setting such as medical, legal and psychiatric, possess an extensive vocabulary, demonstrates sophisticated use of ASL grammar as well as ASL features and transliterates conceptually accurate with appropriate mouthing.

(3) Court proceeding--A proceeding that is under the jurisdiction of Texas courts for civil cases and criminal actions, including arraignments, hearings, examining trials, trials, depositions, mediations, court-ordered arbitrations, or other forms of alternative dispute resolution.

(4) Trilingual interpreter services--Interpreting services provided by an otherwise qualified interpreter who is proficient in Spanish, in addition to English and sign.

§109.207. Board for Evaluation of Interpreters Board.

(a) The BEI Board assists in the testing and certifying of interpreters to verify that they have reached varying levels of proficiency in skills necessary to facilitate communication between people who are deaf or hard of hearing and people who are not deaf or hard of hearing.

(b) The BEI Board recommends standards to DHHS for each of several levels of certification based on proficiency.

§109.209. Fees, Prerequisites, and Qualifications for Certification.

(a) DHHS charges fees for written and performance examinations, for annual certificate renewal, for five-year recertification, and for provisional certificates, in amounts sufficient to recover the costs of the BEI certification program.

(b) DHHS may waive any prerequisite to obtaining a certificate for an applicant after reviewing the applicant's credentials and determining that the applicant holds a certificate issued by another jurisdiction that has certification requirements substantially equivalent to those of DARS.

(c) Copies of information about the following topics may be obtained from DHHS:

(1) qualifications and prerequisites to testing for certification;

(2) the certification process;

(3) waivers of prerequisites; and

(4) location, schedule, and current fees for interpreter examinations.

§109.211. Provisional Certificate.

(a) DHHS may issue a provisional certificate to an applicant currently certified in another jurisdiction who seeks a BEI certificate and who:

(1) has been certified in good standing as an interpreter for at least two years in another jurisdiction, including a foreign country, that has certification requirements substantially equivalent to those of DARS;

(2) has passed an examination recognized by DHHS relating to the practice of interpretation for people who are deaf or hard of hearing; and

(3) is sponsored by an interpreter certified by DARS with whom the provisional-certificate holder will practice during the time he or she holds a provisional certificate.

(b) DHHS may waive the requirement of subsection (a)(3) of this section for an applicant if DHHS determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional certificate is valid until the date DHHS approves or denies the provisional certificate holder's application for a certificate. DARS will issue a certificate to the provisional certificate holder if:

(1) the provisional certificate holder is eligible to be certified under §109.209 of this division (relating to Fees, Prerequisites, and Qualifications for Certification); or

(2) the provisional certificate holder passes the part of the examination prescribed by DHHS to establish that he or she has the minimum level of English proficiency; and

(3) DHHS verifies that the provisional certificate holder:

(A) meets the academic and experience requirements for a certificate under this chapter; and

(B) satisfies any other certification requirements under this chapter.

(d) DHHS must approve or deny a provisional certificate holder's application for a BEI certificate not later than the 180th day after the date the provisional certificate is issued. DHHS may extend the 180-day period if the results of an examination have not been received by DHHS before the end of that period.

(e) The decision of DHHS on issuance or denial of a BEI provisional certificate is final and may not be appealed.

§109.213. Compensation of Raters.

DHHS has established a fee schedule for compensation of raters. Copies of the current fee schedule may be obtained from DHHS.

§109.215. Certification.

(a) DARS, in administering the certification program, obtains criminal conviction records information on all applicants for certification and current certificate holders; the information may be used in determining whether applicants or certificate holders are eligible to obtain or maintain certification.

(b) DARS certifies an applicant who passes the appropriate examinations prescribed by DARS and who satisfies the other qualifications required by the rules in this chapter.

(c) Upon successful completion of all requirements for certification and approval by DHHS, the applicant is issued a card evidencing certification.

§109.217. Qualifications and Requirements for a BEI Certificate.

(a) To apply for or to take any examination for a BEI Certificate, an applicant must:

(1) be at least 18 years old;

(2) have earned a high school diploma or its equivalent;

(3) not have a criminal conviction that could qualify as grounds for denial, probation, suspension, or revocation of a BEI certificate, or other disciplinary action against any holder of a BEI certificate.

(b) To take the written Test of English Proficiency, an applicant must have:

(1) met all the criteria in subsection (a) of this section; and

(2) earned at least 30 credit hours from an accredited college or university, with a cumulative GPA of 2.0 or higher.

(c) To take a BEI performance test, an applicant must have:

(1) met all the criteria in subsection (a) of this section;

(2) earned a passing score on the Test of English Proficiency, unless the applicant is applying for a specialty certificate; and

(3) earned an associate degree and/or a minimum of 60 credit hours from an accredited college or university, with a cumulative GPA of 2.0 or higher, unless the applicant is applying for a specialty certificate or except as provided in subsections (e) and (f) of this section.

(d) To apply for and to be issued a BEI certificate, an applicant must have:

(1) met all criteria in subsection (a) of this section; and

(2) earned an associate degree and/or a minimum of 60 credit hours from an accredited college or university, with a cumulative GPA of 2.0 or higher, except as provided in subsections (e) and (f) of this section; and earned a passing score on the requisite examination for the certificate level sought.

(e) A BEI certificate holder who holds an active and valid BEI certificate awarded as a result of proceedings initiated before January 1, 2012, is exempt from the educational or degree requirements in subsections (b), (c), and (d) of this section, as long as the BEI certificate remains active and valid.

(f) A BEI certificate holder who holds an active and valid BEI certificate awarded as a result of proceedings initiated before January 1, 2012, and who applies for an additional BEI certificate level after January 1, 2012, may be exempt from the educational or degree requirements of subsections (b), (c), and (d) of this section, if, at the time the certificate holder applies for, takes, and passes any BEI examination for the additional certificate, the BEI certificate holder:

(1) has an active and valid BEI certificate that is fully compliant with BEI's annual certificate maintenance and five-year recertification rules and requirements;

(2) is not under any type of active or pending disciplinary action from BEI or DHHS; and

(3) satisfies all other rules and requirements applicable to the additional BEI certificate level sought.

(g) A certified interpreter wanting to take a higher level BEI performance test must have the following prerequisite certificate for the corresponding BEI performance test:

Figure: 40 TAC §109.217(g)

§109.219. Administration of Examination for BEI Interpreter Certificate.

(a) A person who fails an examination may apply for reexamination at an examination that is scheduled no earlier than six months after the date the person failed the examination that is being retaken.

(b) Examinations may be offered in the state at least twice a year at times and places designated by DHHS or by a designated testing facility. The current schedule of times and places for examinations may be obtained from DHHS or a designated testing facility.

(c) An applicant who does not attend a scheduled examination forfeits the examination fee paid to DHHS. An applicant may attend a future examination without payment of additional fee if the DHHS-designated testing facility allows for the examination to be rescheduled or upon proof of missing an examination because of the following:

(1) illness of the applicant or an immediate family member whom the applicant has responsibility to be with; or

(2) documented evidence that the applicant was unable to attend the examination because of reasons beyond his or her control.

§109.221. Validity of Certificates and Recertification.

(a) Certificates are valid for five years, subject to the certificate holder's payment of an annual certificate renewal fee. After expiration of the five-year period, a certificate holder must be recertified by DARS.

(b) A certificate holder may be recertified if he or she can show documentation of having received at least the minimum number of required continuing education units, or achieves an adequate score on a specified examination. Information on current annual renewal or five-year recertification requirements may be obtained from DHHS.

§109.223. Certificate Renewal.

(a) A person who is otherwise eligible to renew a certificate may renew an unexpired certificate by paying the required renewal fee to DHHS before the expiration date of the certificate. A person whose certificate has expired may not engage in activities that require a certificate until the certificate has been renewed.

(b) A person whose certificate has been expired for 90 days or less may renew the certificate by paying to DHHS a renewal fee that is equal to one and one-half times the normally required renewal fee.

(c) A person whose certificate has been expired for more than 90 days but less than one year may renew the certificate by paying to DHHS a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose certificate has been expired for one year or more may not renew the certificate. The person may obtain a new certificate by complying with the requirements and procedures, including the examination requirements, for obtaining an original certificate.

(e) A person who was certified in Texas, moved to another state, and is currently certified and has been in practice in the other state for the two years preceding the date of application may obtain a new certificate without reexamination. The person must pay to DHHS a fee that is equal to two times the normally required renewal fee for the certificate.

(f) Not later than the 30th day before the date a person's certificate is scheduled to expire, DHHS sends written notice of the impending expiration, and certificate renewal instructions, to the person at the person's last known address according to the records of DHHS.

(g) Failure to receive the notice of impending expiration from DHHS, referenced in subsection (f) of this section, does not extend the expiration date of a certificate and does not exempt a person from any requirements of this subchapter.

§109.225. Continuing Education Programs.

DHHS recognizes, prepares, and administers continuing education programs for its certificate holders. A certificate holder must participate in the programs to the extent required by DHHS to keep his or her certificate. Current requirements for continuing education and announcements of current training opportunities may be obtained from DHHS.

§109.227. Disciplinary Actions.

(a) DARS may take disciplinary action against a certificate holder who is found to be in violation of a statute, rule, or policy of DARS, including any of the provisions of §101.1211 of this title (relating to Grounds for Denying, Revoking, or Suspending an Interpreter's Certificate).

(b) A disciplinary action against a certificate holder may be composed of any one or a combination of the following actions:

(1) revocation;

(2) suspension;

(3) probation;

(4) denial; or

(5) with respect to certified court interpreters only, assessment of an administrative penalty under the law.

(c) All final disciplinary actions taken by DARS or by DHHS are permanently recorded and made available upon request as public information. Except for an informal reprimand, all disciplinary actions may be released in a press release, and may be transmitted to the RID or states licensed to use BEI tests, as appropriate.

(d) A certificate holder whose certificate has expired for nonpayment of renewal fees or is the subject of a pending disciplinary action, complaint, or investigation continues to be subject to all statutory, rule, and procedural provisions of DARS governing certified interpreters until the certificate is revoked by DARS or becomes nonrenewable under the rules.

§109.229. Examination Accommodations for Persons with Disabilities.

(a) "Disability" has the meaning assigned by the ADA.

(b) Applicants who request a reasonable accommodation based on a claimed disability are provided with reasonable accommodations if they meet the eligibility criteria set forth in this subchapter.

(c) To be eligible for a reasonable accommodation based upon a diagnosed disability, a BEI applicant must make a written request and must:

(1) provide written documentation from a licensed medical professional (a physician, psychiatrist, or psychologist) that:

(A) specifies the applicant's disability diagnosis or diagnoses;

(B) explains how the applicant's disability substantially limits his or her ability to take the test for which the applicant is applying under current testing procedures;

(C) provides guidance about recommended modifications that enable the applicant to test; and

(D) is dated less than two years from the date the application was received for the test for which the applicant is seeking an accommodation; and

(2) submit all documentation under cover of the certifying medical professional's letterhead and signature to DHHS.

(d) DHHS determines what reasonable accommodations an eligible BEI applicant receives, and the determination is final.

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 424-4050

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DIVISION 2. BEI COURT INTERPRETER CERTIFICATION

40 TAC §§109.301, 109.303, 109.305, 109.307, 109.309, 109.311, 109.313, 109.315, 109.317, 109.319, 109.321, 109.323, 109.325, 109.327, 109.329, 109.331

STATUTORY AUTHORITY

The new rules are being proposed under the authority of Texas Human Resources Code, Chapters 81 and 117, and 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.

No other statute, article, or code is affected by this proposal.

§109.301. Purpose.

The purpose of this division is to set out the administration and general procedures governing the certification of court interpreters for people who are deaf or hard of hearing in Texas.

§109.303. Legal Authority.

DARS court interpreter certification is administered and enforced under the statutory authority of:

(1) Government Code, Chapter 57;

(2) Civil Practice and Remedies Code, §21.003; and

(3) Code of Criminal Procedure, Art. 38.31(g).

§109.305. Definitions.

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

(1) DHHS-approved training or workshop--Court-related training or workshop approved by DHHS as satisfying specific training requirements for testing and continuing education for renewal.

(2) Mentee--A certified interpreter who seeks to become a certified court interpreter and who receives instruction from a DHHS-approved mentor.

(3) Mentor--A certified court interpreter who has applied to DHHS, has satisfied specific training and or testing requirements, and has been approved by DHHS to provide court interpreting instruction.

§109.307. Administration of Examination for Court Interpreter Certificate.

(a) In accordance with Government Code, §57.023, DARS prepares court interpreter examinations under this division that test an applicant's knowledge, skill, and efficiency in interpreting court proceedings.

(b) DHHS determines content and format for examinations on legal and court procedure skills and knowledge and administers the examinations to applicants.

§109.309. Requirements for Interpreting Court Proceedings in Texas Courts.

(a) These provisions apply to all proceedings of Texas courts, including county, municipal, and justice courts.

(b) A person interpreting court proceedings in Texas courts must hold a current court interpreter certificate issued by DARS or a current legal certificate issued by RID.

§109.311. Responsibilities of Certified Court Interpreters.

(a) A BEI-certified court interpreter must provide the following written notification to the court: "Certified by DARS, Office for Deaf and Hard of Hearing Services. Complaints about the services provided by this person may be presented to DHHS." The notification must also be included on all contracts and invoices for court interpreter services.

(b) In addition to the presentation of a person's court interpreter certificate card, which is required for qualification as a court interpreter for a particular case under §109.313 of this division (relating to Qualifications of Certified Court Interpreters), certified court interpreters must present their court interpreter certificate card upon the request of a court or an officer of the court.

(c) A BEI-certified court interpreter must notify DHHS, in writing, within 30 days of any change in his or her name, address, or telephone number.

(d) Failure by a BEI-certified court interpreter to satisfactorily fulfill the responsibilities under this division may be grounds for administrative sanctions by DARS under Government Code, §57.022(b)(8).

§109.313. Qualifications of Certified Court Interpreters.

(a) In each civil case, deposition, or criminal action in a Texas court for which a person interprets testimony, the person must be qualified, as that term is defined in Civil Practice and Remedies Code, §21.003, and Code of Criminal Procedure, Art. 38.31(g), as court interpreter for that particular case before beginning to interpret testimony.

(b) A person must show proof that the person is qualified, as that term is defined in Civil Practice and Remedies Code, §21.003, and Code of Criminal Procedure, Art. 38.31(g), under this subsection to act as a court interpreter.

(c) In order to act as court interpreter for a particular case, the person must present to the judge presiding, or to the court reporter at a deposition, either:

(1) a current card issued by DARS, stating that the person is certified as a court interpreter; or

(2) a current membership card issued in the name of the person by RID, carrying the designations "Certified" and "SC:L."

(d) A qualified interpreter in a criminal action in a Texas court, including an arraignment, hearing, examining trial, and trial, for a per-

son who has a hearing impairment that inhibits the person's comprehension of the proceedings or communication with others, must hold a current court interpreter certificate issued by DARS or a current legal certificate issued by RID.

§109.315. Qualifications and Requirements for Court Certificate.

(a) An applicant to become a court interpreter must:

(1) hold at least one BEI certificate at Level III, IV, V, IIIi, IVi, Vi, Advanced, Master, or Oral: Comprehensive; or hold certification from RID with a Comprehensive Skills Certificate, Certificate of Interpretation/Certificate of Transliteration, Reverse Skills Certificate, Certified Deaf Interpreter, or Master Comprehensive Skills Certificate, or National Interpreter Certification Advanced or National Interpreter Certification Master; and

(2) pass an examination on legal and court procedure skills and knowledge.

(b) An applicant must have the following training and qualifications to take an examination:

(1) Before taking the court interpreter examination, an applicant must provide to DHHS proof that the applicant has completed instruction in court interpretation in one of the following methods:

(A) completion of DHHS-approved courses of instruction in courtroom interpretation knowledge and skills with not less than 12 CEUs;

(B) mentoring by a certified court interpreter who has been approved by DHHS to act as a mentor for not less than 120 hours of actual practice; or

(C) a combination of instruction and mentoring totaling 120 hours.

(2) The current list of DHHS-approved courses of instruction in courtroom interpretation skills and training programs for interpreters applying for court interpreter certification or for certified court interpreters needing continuing education unit credits may be obtained from DHHS or the DARS Inquiries Unit.

(c) A person with an expired certification must not perform work for which a certification is required under Government Code, Chapter 57.

§109.317. Training Programs for Certified Court Interpreters Managed by DARS or by Public or Private Educational Institutions.

(a) DHHS-Approved Mentors.

(1) A person intending to be a mentor must apply on a form provided by DHHS and be approved by DHHS.

(2) To be a mentor for court interpreting, the person must:

(A) meet the requirements for and hold court interpreter certification issued by DARS or RID for not less than one year;

(B) pass an examination on legal and court procedure skills; and

(C) not have been subject to disciplinary action in the previous two years.

(3) Mentors must conform to a course of training prescribed by DHHS.

(b) DHHS-Approved Courses of Instruction.

(1) An approved mentor must submit to DHHS for each proposed mentee a written course outline and materials to be used during instruction.

(2) DHHS reviews the proposed course outline and materials and determines whether the course is approved.

(c) Public or Private Training Programs.

(1) DARS may contract with public or private educational institutions, and other entities, to administer training programs.

(2) Instructors must hold a court interpreter certificate issued by DARS or RID, be a licensed attorney or paralegal, or be otherwise found to be qualified as an instructor by DHHS.

(3) In accordance with Government Code, §57.021(b), DARS suspends training offered by an institution if the training fails to meet the requirements established by DARS.

§109.319. Instructions for the Compensation of a Certified Court Interpreter and Designation of the Party or Entity Responsible for Payment of Compensation.

(a) In accordance with Civil Practice and Remedies Code, §21.006 and HB 2292, 78th Legislature (RS), §1.21, the certified court interpreter in civil cases and depositions must be paid a reasonable fee determined by the court after considering the recommended fees of DARS. If the certified court interpreter is required to travel, his or her actual expenses of travel, lodging, and meals relating to the case must be paid at the same rate provided for state employees. The certified court interpreter's fee and expenses must be paid from the general fund of the county in which the case was brought.

(b) In accordance with Code of Criminal Procedure, Art. 38.31(f), and HB 2292, 78th Legislature (RS), §1.21, a certified court interpreter appointed in criminal actions is entitled to a reasonable fee determined by the court after considering the recommended fees of DARS. When travel of the certified court interpreter is involved, all the actual expenses of travel, lodging, and meals incurred by the certified court interpreter pertaining to the case he or she is appointed to serve must be paid at the same rate provided for state employees.

(c) Under the authority of the Code of Criminal Procedure, Art. 38.31(f); Government Code, §57.022(b)(7); and Civil Practice and Remedies Code, §21.006, DARS establishes recommended fees to pay court-appointed certified court interpreters for persons who are deaf or hard of hearing, for interpreter services that must be provided in proceedings as set forth in the specific statutes.

(d) These fees may be reviewed and revised as considered necessary by DHHS. The schedule of fees and any changes are posted on the DHHS website and are available upon request.

§109.321. Administrative Sanctions Enforceable by DARS.

DHHS may begin proceedings to impose administrative penalties or sanctions, or both, under Human Resources Code, Chapter 81 or Government Code, Chapter 57 if a person violates any provision of the following:

(1) Government Code, Chapter 57;

(2) Human Resources Code, Chapter 81;

(3) Subchapter B of this chapter; or

(4) an order of the director of DHHS.

§109.323. Prohibited Acts.

(a) A person may not interpret for someone who is deaf or hard of hearing at a court proceeding or advertise or represent that the person is a certified court interpreter unless the person holds a current court interpreter certificate issued by DARS or a current legal certificate issued by RID.

(b) Violation of the prohibition in this section is a Class A misdemeanor offense under Government Code, §57.027(a), and may also

subject the violator to an administrative penalty assessed by DARS under Government Code, §57.027(b) and §109.321 of this division (relating to Administrative Sanctions Enforceable by DARS).

§109.325. Enforcement.

DARS or DHHS investigates allegations of violations and enforces this subchapter. Allegations of violations may also be referred to another appropriate enforcement or regulatory authority. Allegations concerning violations of this subchapter should be forwarded, in writing, to the director.

§109.327. Criminal Offense.

(a) Government Code, §57.027(a) provides that a person commits an offense if the person violates Government Code, Chapter 57, Subchapter B, pertaining to court interpreters for people who are deaf or hard of hearing, or a rule adopted under Government Code, Chapter 57, Subchapter B. An offense under Government Code, §57.027(a) is a Class A misdemeanor.

(b) The provisions of this subchapter are adopted under the provision of law described in subsection (a) of this section, and violations are subject to criminal penalties. In addition, violations of the provisions of §109.307 of this division (relating to Administration of Examination for Court Interpreter Certificate) and §109.321 of this division (relating to Administrative Sanctions Enforceable by DARS) constitute direct violations of Government Code, §57.026, and are also subject to criminal penalties under Government Code, §57.027(a).

§109.329. Actions against Persons Not Certified as Court Interpreters.

(a) DHHS investigates complaints and may initiate disciplinary action against a person alleged to perform court interpretation without certification or authorization as provided by this division. DHHS follows the investigative process and resulting action listed in paragraphs (1) - (3) of this subsection to ensure that affected people are afforded due process of law.

(1) Upon receipt of a complaint from the public or from a DARS staff member, DHHS evaluates the information to determine if the evidence provides reasonable cause that a violation may have occurred.

(2) If reasonable cause does not exist, an investigation is not initiated.

(3) If reasonable cause is found, then the DHHS staff initiates an investigation to determine if a violation of law has occurred. DHHS' investigative process is as follows:

(A) The person named in the complaint is advised of the complaint and the specific section of the Government Code, Chapter 57 that appears to have been violated.

(B) The person is afforded the opportunity to respond to the complaint to show that the actions that precipitated the complaint are not in violation of the Government Code, Chapter 57.

(C) If, after evaluation of the person's response, a violation appears evident, the person is afforded the opportunity for a hearing as provided to certificate holders under Chapter 101, Subchapter E, Divisions 1 and 4 of this title (relating to General Rules and Office for Deaf and Hard of Hearing Services) or for resolution of the complaint through a DARS order, which may include the imposition of an administrative penalty.

(b) Complaints, allegations of violations, and findings of violations against a person, relating to the rules of this division may be considered as grounds for denial of pending or subsequent applications for interpreter certification from DARS and as grounds for disciplinary action against a holder of other DARS-issued certifications.

§109.331. Court Interpreter Qualifications in Civil Cases or Depositions under the Civil Practice and Remedies Code.

A court interpreter in a civil case or deposition in a Texas court must hold a current court interpreter certificate issued by DARS or a current legal certificate issued by RID.

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 December 17, 2012.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 424-4050

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DIVISION 3. BEI TRILINGUAL CERTIFICATION

40 TAC §§109.401, 109.403, 109.405

STATUTORY AUTHORITY

The new rules are being proposed under the authority of Texas Human Resources Code, Chapters 81 and 117, and 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.

No other statute, article, or code is affected by this proposal.

§109.401. Purpose.

The purpose of this division is to set out the administration and general procedures governing the certification of trilingual interpreters for persons who are deaf or hard of hearing in Texas.

§109.403. Legal Authority.

DARS administers and enforces trilingual certification under authority of the Human Resources Code, Chapter 81.

§109.405. Qualifications and Requirements for a Trilingual Certificate.

(a) An applicant for a trilingual certificate must:

(1) provide proof of holding one of the following certificates:

(A) valid Board for Evaluation of Interpreters (BEI) Level I, II, III, IV, V, Basic, Advanced, or Master certificate; or

(B) valid Registry of Interpreters for the Deaf (RID) Comprehensive Skills Certificate (CSC), Certificate of Interpretation (CI), and/or Certificate of Transliteration (CT); or

(C) valid National Association of the Deaf-Registry of Interpreters for the Deaf (NAD-RID) National Interpreter Certification (NIC), National Interpreter Certification Advanced, or National Interpreter Certification Master; and

(2) meet the following qualifications and requirements:

(A) satisfy qualifications set forth in §109.217 of this chapter (relating to Qualifications and Requirements for a BEI Certificate);

(B) submit the appropriate application and pay required fees;

(C) pass the requisite examinations for the trilingual certificate sought, which include:

(i) the Test of Spanish Proficiency; and

(ii) a trilingual performance examination.

(b) Trilingual certificate holders must satisfy the annual certificate renewal and five-year recertification requirements for both the prerequisite certificate and for the trilingual certificate.

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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SUBCHAPTER C. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM

40 TAC §§109.501, 109.503, 109.505, 109.507, 109.509, 109.511, 109.513, 109.515, 109.517, 109.519

STATUTORY AUTHORITY

The new rules are being proposed under the authority of Texas Human Resources Code, Chapters 81 and 117, and 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.

No other statute, article, or code is affected by this proposal.

§109.501. Purpose.

The purpose of this subchapter is to set out the administration and general procedures governing the Specialized Telecommunications Assistance Program.

§109.503. Legal Authority.

The Specialized Telecommunications Assistance Program is created under authority of the Utilities Code, Chapter 56, Subchapter E.

§109.505. Definitions.

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

(1) Application--The form DHHS uses to gather and document information about a person applying for assistance under this program.

(2) Basic specialized telecommunications equipment--A basic device, or basic devices that work together as one device, determined by DHHS to be necessary to provide effective access to the telephone network for a person whose disabilities impair his or her ability to access the telephone network.

(3) Basic specialized telecommunications service--A service, or services that work together as one service, determined by DHHS to be necessary to provide effective access to the telephone network for a person whose disabilities impair his or her ability to access the telephone network.

(4) Financial assistance--A monetary value established by a voucher for a specialized device or service; the value might not cover the full price of the device or service.

(5) Financial independence--A situation in which two or more otherwise eligible persons reside in the same household but are not dependent upon one another for financial support.

(6) Functionally equivalent network access--Access to the telephone network that provides communication access for a person with a disability that is comparable to that of a person without a disability.

(7) Legal guardian--A person appointed by a court of competent jurisdiction to exercise the legal powers of another person.

(8) Program--Specialized Telecommunications Assistance Program (STAP).

(9) PUC--Public Utility Commission of Texas.

(10) Resident--A person who resides in Texas as evidenced by one of the following unexpired documents: Texas driver's license, ID card issued by a governmental entity with address, utility bill with address, voter registration card, vehicle registration receipt, official letter from a residential facility signed by the director or supervisor, or other document approved by DHHS.

(11) Vendor--An entity or a person that can sell basic specialized telecommunications equipment or services, as defined under this program, and is registered as such with the PUC.

(12) Voucher--A financial assistance document that is exchanged for the purchase of a specified type of device or service to facilitate functionally equivalent access to the telephone network.

§109.507. Determination of Basic Equipment or Service.

(a) In determining basic equipment or service available for voucher exchange, DHHS applies the following criteria:

(1) The equipment or service must be for the purpose of accessing the telephone network.

(2) The primary function of the equipment or service must apply to telephone access and not to daily living access, unless the equipment or service for daily living access enables a person to access the telephone network and is less expensive than equipment or service that functions primarily for telephone access, or unless there is no other equipment or service available that enables telephone access.

(3) A service must be less expensive than the basic specialized telecommunications equipment approved for a voucher under this program and must be able to meet the same need.

(b) DHHS maintains a list of eligible equipment and services.

§109.509. Preliminary and Comprehensive Assessment.

(a) Preliminary assessment. To determine whether a person is eligible for a voucher, DHHS conducts a preliminary assessment based

on the certification section of the application. A person is eligible if DHHS determines:

(1) that the person has a disability that impairs his or her ability to effectively access the telephone network;

(2) that the person can gain access to the telephone network by receiving a device or service authorized by a voucher; and

(3) that the person can gain access to the telephone network with a device or service authorized by the specific voucher applied.

(b) Comprehensive assessment. If additional information is needed to determine the appropriate basic voucher for an eligible person, DHHS may conduct a comprehensive assessment of the person's disabilities, abilities, and needs. The comprehensive assessment is limited to information that is necessary to identify the basic needs that enable the person to access the telephone networks and may include an analysis of medical and/or other factors that bear on the person's impairment or impediments to accessing the telephone network.

(c) Existing information. DHHS may use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information on the person, including information provided by the person, his or her family, the certifier, or any other source.

(d) Final determination. DHHS determines eligibility for a voucher, and the determination is final.

§109.511. Eligibility.

To be eligible for assistance from this program, a person must:

(1) be a resident of Texas;

(2) be a person with a disability that impairs his or her ability to effectively access the telephone network;

(3) be in a situation where no other person in the household with the same type of disability needing the same type of equipment has received a voucher for equipment unless persons in the household are financially independent of each other;

(4) not have received a voucher from DHHS for any specialized telecommunications equipment or services before the 5th anniversary of the date the person exchanged the previously issued voucher under this program, unless before that anniversary, the person demonstrates that he or she has developed a need for a different type of specialized telecommunications equipment or service under this program because of a change in the person's disability status;

(5) be able to benefit from the specialized telecommunications equipment or service provided by the voucher in accessing the telephone network; and

(6) be certified as a person with a disability that impairs the person's ability to effectively access the telephone network, by a person authorized in this subchapter to issue such certifications.

§109.513. Persons Authorized to Certify Disability.

(a) An applicant must be certified as a person with a disability that impairs the person's ability to effectively access the telephone network. The following can serve as certifiers:

(1) licensed hearing aid specialists;

(2) licensed audiologists;

(3) licensed physicians;

(4) DARS rehabilitation counselors;

(5) state-certified teachers of persons who are deaf or hard of hearing;

(6) licensed speech pathologists;

(7) state-certified teachers of persons who are visually impaired;

(8) state-certified teachers of persons who are speech-impaired;

(9) state-certified special education teachers;

(10) STAP specialists as named in a DHHS STAP Outreach and Training contract;

(11) licensed social workers; or

(12) DHHS-approved specialists working in a disability-related field.

(b) By certifying an application, a certifier attests that he or she:

(1) is eligible to certify under the provisions of the program;

(2) has personally met with and assessed the applicant's disability to determine that he or she is eligible, in accordance with the program eligibility criteria;

(3) has reviewed the information on the application to ensure that the form is completed properly and that all requested information has been provided; and

(4) has determined that the applicant will be able to benefit from access to the telephone network system provided by the specialized telecommunications equipment or services requested on the application.

(c) An application must be properly certified before DHHS can process and approve the application and issue the voucher.

(d) Certifiers who have violated or who are suspected of violating any DARS, PUC, or other rules, policies, or laws relating to this program may no longer be authorized to certify applications. Persons committing or suspected of committing such violations may be referred to the PUC, to the certifier's licensing agency, or to both, as appropriate.

§109.515. Vouchers.

(a) Eligible applicants are issued an individually numbered voucher with a specified dollar value to be used toward the purchase of the specialized telecommunications equipment or service that must be listed on the voucher.

(b) A voucher guarantees payment in accordance with PUC rules, policies, or law to a vendor of new basic specialized telecommunications devices or of basic specialized telecommunications services.

(c) A voucher is not required to, and might not, cover the full price of an applicable device or service available under this program.

(d) An eligible applicant exchanging a voucher for the purchase of a specialized telecommunications device or service is responsible for payment of the difference between the voucher's value and the price of the device or service.

(e) A voucher is nontransferable and has no cash value.

(f) A voucher expires on the date stated on the voucher.

§109.517. Determination of Voucher Category Value and Eligibility Criteria for a Voucher.

(a) DHHS determines the reasonable price for basic specialized telecommunications devices or services for a voucher. The price becomes the voucher category value for a specific voucher.

(b) The voucher category value as determined by DHHS might not cover the entire cost of the basic specialized telecommunications equipment or service.

(c) DHHS reviews voucher category values at least annually. Existing Medicare and Medicaid schedules are considered in establishing voucher category values. Where Medicare and Medicaid schedules do not apply, voucher category value is determined by best value based on factors that include reasonable and customary industry standards for each specific device or service.

(d) DHHS reviews eligibility criteria for a voucher category at least biennially. DHHS solicits comments from persons DHHS considers knowledgeable in technology and in the telephone access needs of persons with disabilities. Comments obtained are considered in determining eligibility criteria for a voucher category.

(e) Proposed voucher category values and eligibility criteria for a voucher category are posted to the DHHS STAP webpage for comments 45 days before final determinations are made. Comments obtained from the advance posting are considered in determining voucher category values and eligibility criteria for a voucher category.

(f) DHHS determines voucher category values and eligibility criteria for a voucher category, and the determination is final. Medicare and Medicaid rates may be considered in setting voucher category values, where applicable, but Medicaid or Medicare eligibility is not a determining factor for voucher eligibility criteria.

§109.519. Consumer Confidentiality.

Consumer confidentiality provisions applicable to the program are contained in §101.811 of this title (relating to Confidentiality of Consumer Information in the Specialized Telecommunications Assistance Program).

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

Filed with the Office of the Secretary of State on December 17, 2012.

TRD-201206517
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 424-4050

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SUBCHAPTER D. DEAF AND HARD OF HEARING DRIVER IDENTIFICATION PROGRAM

40 TAC §§109.601, 109.603, 109.605, 109.607, 109.609

STATUTORY AUTHORITY

The new rules are being proposed under the authority of Texas Human Resources Code, Chapters 81 and 117, and 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.

No other statute, article, or code is affected by this proposal.

§109.601. Purpose.

The purpose of this subchapter is to set out the administration and general procedures governing the Deaf and Hard of Hearing Driver Identification Program. The program provides for the design and issuance of a Visor Identification Card that may be displayed in a motor vehicle that is operated by a person who is deaf or hard of hearing.

§109.603. Legal Authority.

The Deaf and Hard of Hearing Driver Identification Program is created under authority of the Human Resources Code, §81.019.

§109.605. Definitions.

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

(1) Applicant--A person applying to DARS DHHS for a Visor Identification Card.

(2) Application--The form that DHHS uses to gather and document information about an applicant for a Visor Identification Card under the Deaf and Hard of Hearing Driver Identification Program.

(3) Visor Identification Card--The identification card issued by DHHS to an eligible driver who is deaf or hard of hearing for use in a motor vehicle operated by that driver. The card attaches to the vehicle's visor and identifies the driver as a person who is deaf or hard of hearing to facilitate communication during a traffic stop.

§109.607. Eligibility.

(a) To be eligible for a Visor Identification Card, an applicant must:

(1) be a resident of Texas;

(2) have a valid driver's license or permit issued by a state agency authorized to issue driver's licenses;

(3) be a person with a disability that impairs the person's ability to hear; and

(4) submit a completed application to DHHS, along with any requested documentation and any applicable fee.

(b) DHHS requires an applicant for a Visor Identification Card to provide acceptable proof that the applicant is deaf or hard of hearing. Acceptable proof may include the following:

(1) medical proof as determined by DHHS that the applicant is deaf or hard of hearing;

(2) a state-issued driver's license or permit which indicates that the applicant is deaf or hard of hearing; or

(3) certification by a licensed physician or licensed audiologist that the applicant has a hearing loss severe enough to possibly impede communication in some traffic stops.

(c) DHHS determines eligibility for a Visor Identification Card, and the determination is final.

§109.609. Deaf and Hard of Hearing Driver Visor Identification Card.

(a) DHHS is responsible for the design and content of the Visor Identification Card.

(b) DHHS issues all Visor Identification Cards.

(c) The Visor Identification Card documents the name of the driver to whom it is issued and contains a DHHS-designated driver registration number.

(d) DHHS maintains a registry of all holders of Visor Identification Cards.

(e) DHHS may set a fee for each Visor Identification Card to defray the costs of administering the Deaf and Hard of Hearing Driver Identification Program.

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

Filed with the Office of the Secretary of State on December 17, 2012.

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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 E. CERTIFICATE OF DEAFNESS FOR TUITION WAIVER PROGRAM

40 TAC §§109.701, 109.703, 109.705, 109.707, 109.709

STATUTORY AUTHORITY

The new rules are being proposed under the authority of Texas Human Resources Code, Chapters 81 and 117, and 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.

No other statute, article, or code is affected by this proposal.

§109.701. Purpose.

The purpose of this subchapter is to set out the administration and general procedures governing the Certificate of Deafness for Tuition Waiver Program. The program provides a certificate to a person who applies for tuition waiver at a state-supported postsecondary school in Texas and whose sense of hearing is nonfunctional.

§109.703. Legal Authority.

The Certificate of Deafness for Tuition Waiver Program is created under authority of the Education Code, Chapter 54, §54.364.

§109.705. Definitions.

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

(1) Applicant--A person applying to DARS DHHS for a Certificate of Deafness for Tuition Waiver.

(2) Application--The form that DARS DHHS uses to gather and document information about an applicant for a Certificate of Deafness for Tuition Waiver under the Certificate of Deafness for Tuition Waiver Program.

(3) Certificate of Deafness for Tuition Waiver--The certificate issued by DARS DHHS to an eligible applicant to certify that the applicant is a deaf person as defined by Education Code, §54.364(a)(3). The applicant may use the certificate to apply for a tuition waiver at any Texas state institution of higher education using public funds, as set forth in Education Code, §54.364(a)(5) and §61.003.

§109.707. Eligibility.

(a) To be eligible for a Certificate of Deafness for Tuition Waiver, the applicant must:

(1) submit an application to DARS DHHS for a Certificate of Deafness for Tuition Waiver;

(2) be at least 17 years old at the time of application or, if less than 17, provide proof of being a high school senior or having a high school diploma or equivalent; and

(3) establish functional deafness in that the applicant's sense of hearing is nonfunctional, after all necessary medical treatment, surgery, and use of hearing aids, for understanding normal conversation.

(b) To establish functional deafness, an applicant whose mode of communication in the classroom is primarily visual must provide documentation verifying one of the following:

(1) unaided average hearing loss in the better ear of 55 decibels (dB) or greater using 500, 1000, 2000, and 4000 Hz, as verified by a licensed audiologist or licensed fitter and dispenser of hearing instruments;

(2) aided average hearing loss in the better ear of 30 dB or greater using 500, 1000, 2000, and 4000 Hz, as verified by a licensed audiologist or licensed fitter and dispenser of hearing instruments;

(3) speech discrimination is less than 50 percent as verified by a licensed audiologist or a licensed fitter and dispenser of hearing instruments; or

(4) other disabling conditions (with or without hearing loss) that result in a person's sense of hearing being nonfunctional as verified by a physician.

(c) Eligibility for a Certificate of Deafness for Tuition Waiver is determined by DARS DHHS, and the determination is final.

(d) The Certificate of Deafness for Tuition Waiver issued by DARS DHHS is not a determination that an applicant satisfies the residency requirement, or any other requirement set forth under Education Code, §54.364, for tuition waiver at any eligible institution.

(e) DARS DHHS may request additional documentation to support an application for a Certificate of Deafness for Tuition Waiver. Failure to provide any requested documentation within the requested period may result in denial of an application.

§109.709. Certificate of Deafness for Tuition Waiver.

(a) DARS DHHS is responsible for the design and content of the Certificate of Deafness for Tuition Waiver.

(b) The Certificate of Deafness for Tuition Waiver documents the name of the person to whom it is issued and contains the signature of an authorized DARS DHHS representative.

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

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 424-4050

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 5. FINANCE

SUBCHAPTER D. PAYMENT OF FEES FOR DEPARTMENT GOODS AND SERVICES

43 TAC §5.42, §5.44

The Texas Department of Transportation (department) proposes amendments to §5.42 and §5.44, concerning payment of fees for department goods and services.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments to §5.42 and §5.44 result from the repeal of 43 TAC §23.27 regarding the sale of goods through *Texas Highways* Magazine and the addition of 43 TAC Chapter 23, Subchapter D, which provides a new promotional product program. That repeal and addition are proposed simultaneously with the amendments to §5.42 and §5.44 in this issue of the *Texas Register.*

Amendments to §5.42 delete travel promotional materials and department publications as examples of items included in the definition of "goods and services" for the purposes of Subchapter D of Chapter 5. Those examples are unnecessary and may be misleading because most, and perhaps all, of the department's promotional materials and department publications will be sold under the new promotional product program, which is excluded from Chapter 5, Subchapter D by §5.44(1). Even without those examples, the definition of "goods and services" is broad enough to cover any materials or publications that are sold in a manner other than under the promotional product program.

Amendments to §5.44 change the internal reference in the exception for products sold through *Texas Highways* magazine under §23.27 to products sold through the promotional product program under new Subchapter D of Chapter 23 of the rules because §23.27 is proposed for repeal and after its repeal, any sales made through the magazine will be made under the new promotional product program. Paragraph (1) is deleted because the reference to §28.11 is no longer under the jurisdiction of the department.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Margo Richards, Director, Travel Information Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Ms. Richards has also determined that for each year of the first five years in which the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be clarity in the rules relating to the sale of goods by and on behalf of the department. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §5.42 and §5.44 may be submitted to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "§5.42, §5.44." The deadline for receipt of comments is 5:00 p.m. on January 28, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.208, which provides the commission with the authority to establish rules regarding the method of payment of a fee for any goods sold or services provided by the department or for the administration of any department program.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.208.

§5.42. Definitions.

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

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) Goods and services--Any goods sold or services provided by the department, including [~~the sale of travel promotional materials and department publications, and~~] the issuance of licenses and permits.

§5.44. Exceptions.

This subchapter does not apply to the payment of:

[~~(1) oversize and overweight permit fees under §28.11 of this title (relating to General Oversize/Overweight Permit Requirements and Procedures);~~]

(1) [~~(2)~~] fees for products sold through the department's promotional product program under Chapter 23, Subchapter D of this title (relating to Promotional Product Program) [~~*Texas Highways* under §23.27 of this title (relating to Magazine Ancillary Products)~~]; and

(2) [~~(3)~~] tolls and customer account fees under §27.82 of this title (relating to Toll Operations).

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 December 14, 2012.

TRD-201206484

Jeff Graham
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 463-8683

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CHAPTER 23. TRAVEL INFORMATION

The Texas Department of Transportation (department) proposes the repeal of §23.27, concerning Magazine Ancillary Products; and proposes new Subchapter D, §§23.51 - 23.59, concerning Promotional Product Program; and Subchapter E, §§23.101 - 23.105, concerning Merchandising Program.

EXPLANATION OF PROPOSED REPEAL AND NEW SECTIONS

This proposal repeals §23.27 regarding the sale of goods through *Texas Highways* Magazine and adds new sections to establish the policies and procedures for the department's sale of all ancillary and promotional products. As part of the federal transportation reauthorization bill, MAP-21, the department is now authorized to offer goods for sale at rest areas and travel information centers. In response to this federal change, the department is changing its rules regarding the sale of promotional items to take advantage of this new authority. In addition, other changes are made to the rules to update the types of products offered for sale and to provide a new program to sell items that contain department-owned trademarks and service marks of intellectual property.

New §23.51, Purpose, states the purpose of Subchapter D.

New §23.52, Definitions, provides the definitions of terms used in Subchapter D.

New §23.53, Sale of Products by the Department, authorizes the department to sell products at various locations and provides basic program requirements. Currently the department sells items only through the *Texas Highways* Magazine. This new section allows the sale of goods at department buildings, including rest areas and travel information centers, to allow the department to take advantage of the changes in the federal law. This section also provides information regarding sales transactions, including shipping and handling fees, sales taxes, payment methods, and the disposition of collected revenue.

New §23.54, Types of Promotional Products, establishes the policies and procedures for the department's sale of products under the promotional product program. The section describes the types and categories of products, which are expanded from those currently authorized to align with the new federal authorization.

New §23.55, Request for Inclusion of Product in Program, establishes the process for the selection and approval of products to be sold under the program. A wholesaler may submit to the department a request for a product to be considered for the program. The Travel Information Division director or the director's designee will make the final product selection. The section sets out the information that the wholesaler must submit with the request.

New §23.56, Market Research and Product Selection, provides the process used for department initiated product selection. This process provides an alternative for the department to seek products that have not been submitted for consideration. Under the process the department may use market research to select products and suppliers for the program.

New §23.57, Contract with a Vendor, authorizes the department to contract with a vendor to provide services for the program. The department is required to make the decision on final product selection and that duty may not be passed to a vendor. The section places specific requirements on the vendor regarding contracts with the wholesaler and the types of reports required to be furnished to the department.

New §23.58, Wholesaler Contract, requires that a wholesaler enter into a contract with the department or the department's vendor before the wholesaler's product may be sold under the program. This requirement is similar to the requirement under current §23.27(e), with minor changes to address formatting issues. The department continues to have the authority to set and change the price and to discontinue the acquisition or sale of the product.

New §23.59, Refunds and Complaints, establishes the process for handling refunds for returned products and complaints received by the department or a contracted vendor. To receive a refund the item must be returned unused and undamaged and accompanied by the tags and packaging that were with the item as delivered.

New §23.101, Purpose, establishes the purpose for new Subchapter E. The rule authorizes the department to sell promotional products bearing the department's trademark or service marks or that use copyrighted material of the department.

New §23.102, Definitions, provides the definitions for terms used in Subchapter E.

New §23.103, Merchandising Program, provides authority for the department to establish a new merchandising program under which the department may solicit proposals from one or more vendors to administer the program and secure retailers to sell products bearing the department's marks at no cost to the department. The department is given the authority to use an outside source for the parts of the program for which the department has limited expertise, but the department will maintain control over the program.

New §23.104, Product and Retailer Selection, establishes the requirements and selection process of products and retailers for the merchandising program. It places specific requirements for the selection of retailers and the information required of products to be sold under this program. The vendor must submit product, sale, and retailer information to the department. This information will be used to determine approvals of products to be sold under the program and retail locations.

New §23.105, Vendor and Retailer Agreement, provides the terms and requirements for retailer and vendor agreements. The department requires that each agreement extend for at least two years and state the fees charged by the vendor to administer the program so that all parties are clear on the costs of participating in the program. The section also provides specific requirements for reports required to be submitted by the vendor to the department to ensure that the department can monitor and oversee the progress of the program.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years in which the repeal and new sections as proposed are in effect, there will be fiscal implica-

tions for state or local governments as a result of enforcing or administering the repeal and new sections. Based on information from other businesses with similar programs, the department estimates that this program could generate revenue of $500,000 starting in fiscal year 2014 with an estimated annual growth of 10 percent in the following years. There will be minimal revenue in fiscal year 2013 as the program may not be implemented until the end of that fiscal year.

Margo Richards, Director, Travel Information Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal and new sections.

PUBLIC BENEFIT AND COST

Ms. Richards has also determined that for each year of the first five years in which the program is fully implemented, the public benefit anticipated as a result of enforcing or administering the repeal and new sections will be the generation of revenue to be deposited to the credit of the state highway fund for the department's use in its travel information division operations in accordance with Transportation Code, §204.009. There are no anticipated economic costs for persons required to comply with the repeal and sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeal of §23.27; and new §§23.51 - 23.59 and §§23.101 - 23.105 may be submitted to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "§§23.51-23.59; §§23.101-23.105." The deadline for receipt of comments is 5:00 p.m. on January 28, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed repeal and new sections, or is an employee of the department.

SUBCHAPTER C. TEXAS HIGHWAYS MAGAZINE

43 TAC §23.27

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

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §204.009.

§23.27. Magazine Ancillary Products.

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 December 17, 2012.

TRD-201206491
Jeff Graham
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 463-8683

SUBCHAPTER D. PROMOTIONAL PRODUCT PROGRAM

43 TAC §§23.51 - 23.59

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §204.009.

§23.51. Purpose.

Transportation Code, §204.009, authorizes the department to sell promotional items such as calendars, books, prints, caps, clothing, or other items that advertise the resources of Texas. This subchapter sets forth policies and procedures relating to the department's promotional product program, including the selection, pricing, and sale of items.

§23.52. Definitions.

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

(1) Program--The promotional product program of the department.

(2) Vendor--A person, including a partnership, corporation, or other business entity, that acts as the authorized agent of the department in the marketing, administration, and the solicitation of participating wholesalers.

(3) Wholesaler--A person, including a partnership, corporation, or other business entity that offers a product to the department to be sold through the program.

§23.53. Sale of Products by the Department.

(a) The department may sell products under this subchapter:

(1) at any department building, including a rest area building or travel information center;

(2) at a location at which the department has access to provide travel information, if such a sale is authorized under the access agreement; and

(3) through the *Texas Highways* magazine and its website.

(b) Shipping and handling fees will be added to mail orders to offset the cost of distribution.

(c) Applicable sales taxes will be added to the price of the products.

(d) Payments for all sales must be made in United States dollars payable in cash or by check or credit card.

(e) All revenue collected under the program will be deposited to the credit of the state highway fund for use in the department's travel information operations.

§23.54. Types of Promotional Products.

(a) A product sold under the program may be designed and produced by the department or purchased from a wholesaler.

(b) A product provided for sale under this program must convey a positive image of the scenic, recreational, historical, geographical, cultural, or artistic aspects of Texas or promote other department programs or campaigns that benefit or promote safe transportation or travel within the state.

(c) Approved product categories:

(1) printed material and paper products;

(2) clothing, jewelry, and accessories;

(3) audio-visual media items;

(4) travel related products;

(5) seasonal items;

(6) home décor;

(7) gardening and outdoor accessories;

(8) kitchen and food items;

(9) games;

(10) promotional items;

(11) tickets for events or attractions in the state; and

(12) travel related coupon booklets.

§23.55. Request for Inclusion of Product in Program.

(a) A wholesaler, at any time, may request that a product be considered for sale under the program by sending to the Travel Information Division director a sample of the product and a written request that includes:

(1) a description of the product, including its composition;

(2) location of the product's manufacturer;

(3) wholesale unit price of the product;

(4) suggested retail price of the product;

(5) selling history and performance of the product if it has been previously marketed;

(6) inventory production capabilities;

(7) method of delivery; and

(8) proof of ownership of the rights to market the product.

(b) The Travel Information Division director or the director's designee will make the final determination on a request under subsection (a) of this section.

(c) The department will notify the wholesaler of the final determination. If the request is approved, the department will initiate a contract for the sale of the wholesaler's product.

(d) All samples submitted under this section become the property of the department unless the wholesaler specifies otherwise in the request and provides with the request a pre-paid UPS return label or details for the wholesaler's personal pick-up of the sample.

§23.56. Market Research and Product Selection.

(a) The department may conduct market research to determine which products are to be offered for sale.

(b) After review of the research results, the department will select the products to be sold and begin a search for suppliers of those products.

(c) The department may obtain bids to produce selected products in accordance with Government Code, Chapters 2155 - 2158.

(d) The department will maintain a list of vendors who express an interest in supplying products. When the department determines that new products are needed, the department will notify those on the list.

§23.57. Contract with a Vendor.

(a) The department may contract with a vendor to conduct market research under §23.56 of this subchapter (relating to Market Research and Product Selection), solicit products, conduct initial product selection, manage the inventory, or to manage product sales.

(b) The final selection of a product for the program must be made by the department.

(c) A vendor that contracts with the department under the program must maintain all records received from a wholesaler regardless of whether the wholesaler's product was selected for the program.

(d) If the department contracts with a vendor to manage product acquisitions or sales for the department, the vendor shall enter into an agreement under §23.58 of this subchapter (relating to Wholesaler Contract) with each wholesaler whose products are acquired by the vendor for the program. The vendor shall furnish to the department, in a format prescribed by the department, a monthly and annual report. The report must include for the reporting period:

(1) a list of the names of all wholesalers participating in the program through the vendor;

(2) a list of the names of all wholesalers who submitted to the vendor products for consideration for the program and for each wholesaler a detailed description of each product submitted and whether the product was selected or rejected;

(3) revenue submitted by the vendor to the department, identifying the location of the sales; and

(4) the amount of fees retained by the vendor by wholesaler and in total.

§23.58. Wholesaler Contract.

(a) A wholesaler whose product is selected must enter into a contract with the department or the department's vendor, as appropriate, before the product may be sold under the program. The contract must include:

(1) the description of the product;

(2) the quantity to be provided;

(3) payment terms;

(4) marketing and distribution terms, if applicable;

(5) the delivery schedule;

(6) the return policy;

(7) the contract period with the termination date of the contract; and

(8) any intellectual property rights related to the product and include or provide for any necessary licensing agreement.

(b) The contract must provide that the department will set the price of the product and may change the price of the product without notice to the wholesaler.

(c) The contract must provide that the department may discontinue the acquisition or sale of a product at any time. A product must achieve an acceptable level of sales activity, as determined solely by the department, to be considered for continued participation in the program.

§23.59. Refunds and Complaints.

(a) A refund of the purchase price of a product sold under the program, less shipping and handling costs, will be made on return of the product and the sales receipt or proof of purchase to the department or the department's vendor, as appropriate, but only if the product is undamaged and unused and is returned with all tags and product packaging.

(b) Complaints about merchandise may be directed to the Travel Information Division director or the department's vendor and will be reviewed before the placement of future orders of the product. If the vendor receives a complaint, the vendor will provide to the department within 30 days after the date of receipt of the complaint a report that provides details of the complaint and all actions taken to resolve the complaint.

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 December 14, 2012.

TRD-201206485
Jeff Graham
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 463-8683

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SUBCHAPTER E. MERCHANDISING PROGRAM

43 TAC §§23.101 - 23.105

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §204.009.

§23.101. Purpose.

Transportation Code, §204.009, authorizes the department to sell promotional items, such as calendars, books, prints, caps, clothing, or other items that advertise the resources of Texas. This subchapter sets forth department policies and procedures relating to the selection, pricing, and sale through outside sources of products that use a trademark, service mark, or copyrighted material of the department.

§23.102. Definitions.

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

(1) Mark--A trademark, service mark, or copyright owned by the department, which may consist of a word, phrase, name, symbol, emblem, logo, or any combination of those items.

(2) Program--The merchandising program of the department.

(3) Retailer--A person, including a partnership, corporation, or other business entity that contracts with the department or department's vendor to sell products under the program.

(4) Vendor--A person, including a partnership, corporation, or other business entity, that acts as the authorized agent of the department in the program.

§23.103. Merchandising Program.

(a) The department may develop a program for the development, production, and sale of items that use a mark of the department. The purpose of the program is to generate revenue for the department's use in its travel information operations.

(b) The department may award one or more contracts for a vendor to market products under the program, to administer the program, or to recruit or solicit retailers for the program at various locations.

(c) The vendor shall cooperate with the department in building and maintaining the goodwill of the department and the goodwill associated with the department's marks.

§23.104. Product and Retailer Selection.

(a) Only products that are in the categories described by §23.54(c) of this chapter (relating to Types of Promotional Products) and that are approved by the department may be sold under the program.

(b) A vendor shall furnish to the department for approval, a sample of each product that is proposed for the program, together with any container, packaging, or wrapping material that will be used with the product. Each new design of or on a product that uses any mark of the department is considered to be a newly proposed product that must be approved by the department before its production.

(c) A vendor shall submit detailed information for a retailer that is proposed to be used in the program that includes:

(1) the business name and location of the retailer;

(2) a detailed description of the program products to be sold by the retailer;

(3) the distribution method to be used;

(4) the website or online site to be used, if applicable;

(5) wholesale costs and retail pricing of program products;

(6) product quantity and production capabilities;

(7) quality assurance;

(8) the retailer's return policy; and

(9) projected sales of program products and revenue-generating potential.

(d) The department will provide a written approval or denial for each product and retailer submitted by the vendor. A notice of denial will include the department's reason for the denial.

§23.105. Vendor and Retailer Agreement.

(a) The vendor must enter into an agreement prescribed by the department with each participating retailer.

(b) Each agreement must:

(1) be for a term of not less than two years and provide the date that the agreement will terminate;

(2) require that the participating retailer comply with state laws prohibiting discrimination based on race, religion, color, age, sex, and national origin, and comply with other applicable discrimination laws;

(3) state the fees charged by the vendor to administer the program; and

(4) provide detailed information about the specific products being sold.

(c) The vendor shall furnish to the department, in a format prescribed by the department, a monthly and annual report. The report must include for the reporting period:

(1) a list of the names of all retailers participating in the program through the vendor;

(2) contact information for each retailer participating in the program through the vendor, including address, key contact name, website, email, and phone numbers;

(3) the amount of administrative and royalty fees owed to the vendor under the program and those collected by the vendor;

(4) revenue submitted to the department for each mark; and

(5) the date of expiration of the agreement for each participating retailer.

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 December 14, 2012.

TRD-201206486
Jeff Graham
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 463-8683

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PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.34

(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 Department of Motor Vehicles or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Motor Vehicles (department) proposes the repeal of §217.34, concerning Registration Fee Credit: Title Reinstatement.

EXPLANATION OF PROPOSED REPEAL

The repeal is necessary because the rule no longer serves a business purpose.

This section was adopted effective January 1, 1976. Since that time, it has moved within the Administrative Code, but the verbiage has remained exactly the same. The department's business processes have changed since 1976. The department issues registration credit vouchers for vehicles that have been destroyed to the extent that they cannot be operated on the highway and the registration fee for the remainder of the registration year is more than $15.

This section provides that if the voucher has been used, the title may be reinstated and the owner repays the registration fees that were used. An example is that Vehicle One is destroyed with $24 left on its registration. The owner used the $24 as part of the vehicle registration on Vehicle Two. Vehicle One is then placed back on the roadway. The $24 must be repaid at the time of registering Vehicle One, and the remaining registration for Vehicle One must also be paid.

The purpose of registration fees is for operation of a vehicle on the roadway. As long as all registration fees are paid for the period of time that both vehicles are on the roadway, then the purpose of the statute has been served. A simpler system is to not to require repayment, just require the owner to pay full registration. For example, Vehicle One is destroyed and has $24 left on the registration. The $24 can be used to register Vehicle Two. If Vehicle One is rebuilt and placed on the roadway, it may be registered at the full registration fee. Registration fee credit should not be repaid. Approximately 100 vehicle owners request credit fee vouchers each year. The cost is the same for the department and the owner.

FISCAL NOTE

Linda Flores, Chief Financial Officer, has determined that for each of the first five years the repeal as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Randy Elliston, Director, Vehicle Titles and Registration, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal.

PUBLIC BENEFIT AND COST

Mr. Elliston 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 or administering the repeal will be to eliminate the need for the department and owners to keep track of repayments. No one has ever repaid. There are no anticipated economic costs for persons required to comply with the repeal. There will be no adverse economic effect on small businesses or individuals.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeal to §217.34 may be submitted to Margaret A. Wilson, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on January 28, 2013.

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Ve-

hicles with the authority to establish rules for the conduct of the work of the department; more specifically, Transportation Code, §502.0021, which authorizes the department the authority to establish rules to administer Chapter 502 (regarding Registration of Motor Vehicles).

CROSS REFERENCE TO STATUTE

Transportation Code, §502.194.

§217.34. Registration Fee Credit: Title Reinstatement.

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 December 17, 2012.

TRD-201206500
Margaret A. Wilson
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 27, 2013
For further information, please call: (512) 467-3853

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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 A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.8

The State Board of Dental Examiners withdraws the proposed amendment to §108.8 which appeared in the July 6, 2012, issue of the *Texas Register* (37 TexReg 5073).

Filed with the Office of the Secretary of State on December 17, 2012.

TRD-201206501
Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: December 17, 2012
For further information, please call: (512) 475-0977

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.2

Proposed amended §465.2, published in the June 8, 2012, issue of the *Texas Register* (37 TexReg 4175), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on December 11, 2012.

TRD-201206387

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.972

The Texas Parks and Wildlife Department withdraws the emergency amendment to §57.972 which appeared in the August 10, 2012, issue of the *Texas Register* (37 TexReg 5865).

Filed with the Office of the Secretary of State on December 13, 2012.

TRD-201206464
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: January 2, 2013
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 36. METALS REGISTRATION

37 TAC §§36.1 - 36.7, 36.9 - 36.24

The Texas Department of Public Safety withdraws the proposed amendments to §§36.1 - 36.7, 36.9 - 36.14, 36.17, and 36.18; and new §§36.15, 36.16 and 36.19 - 36.24 which appeared in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8938).

Filed with the Office of the Secretary of State on December 13, 2012.

TRD-201206461
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: December 13, 2012
For further information, please call: (512) 424-5848

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37 TAC §§36.15, 36.16, 36.19 - 36.21

The Texas Department of Public Safety withdraws the proposed repeal of §§36.15, 36.16, and 36.19 - 36.21 which appeared in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8943).

Filed with the Office of the Secretary of State on December 13, 2012.

TRD-201206462
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: December 13, 2012
For further information, please call: (512) 424-5848

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

43 TAC §215.307

The Texas Department of Motor Vehicles withdraws the proposed amendment to §215.307 which appeared in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7740).

Filed with the Office of the Secretary of State on December 17, 2012.

TRD-201206498
Margaret A. Wilson
General Counsel
Texas Department of Motor Vehicles
Effective date: December 17, 2012
For further information, please call: (512) 467-3853

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 11. GENERAL ADMINISTRATION

1 TAC §354.1133

The Texas Health and Human Services Commission (HHSC) adopts new §354.1133, concerning parental accompaniment requirement for the Medical Transportation Program (MTP) and Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services. The new section is adopted without changes to the proposed text as published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4747) and will not be republished.

The new rule is adopted to clarify and confirm HHSC's policy requiring a parent, a guardian, or another adult authorized by a parent or guardian to accompany a child who receives an EPSDT (known in Texas as Texas HealthSteps) service pursuant to 25 TAC Chapter 33 or who receives a service or benefit provided by MTP operated pursuant to 1 TAC Chapter 380. The adopted rule clarifies and conforms provider practices to HHSC's understanding of the legislative intent of §32.024(s) and (s-1), Human Resources Code--promoting program integrity, ensuring the safety of children receiving services, and encouraging parental involvement in the care of the child. The adopted rule will supplement or supersede current rules governing parental accompaniment set out in 1 TAC §380.207, which sets out program limitations in MTP, and 25 TAC §33.2 and §33.6, which set out requirements for EPSDT services.

The adopted rule ensures that the policies governing both EPSDT and MTP are consistent. It also ensures that the rule governing the EPSDT program is consistent with legislative intent. The adopted rule promotes the safety and well-being of children receiving MTP services or benefits, consistent with the authority conferred on HHSC by §531.02414(e) of the Government Code. And the adopted rule ensures that the long-standing policies of HHSC are followed by Medicaid providers and those responsible for the care of children receiving services.

The adopted rule clarifies which individuals may be deemed "another adult" authorized by a parent or guardian to accompany a child to an EPSDT visit or screening or on an MTP service. As noted below, the phrase "another adult" is not defined in §32.024(s), Human Resources Code. HHSC does not believe that "another adult" could be any adult. First, the legislature did not use that phrase. Second, it would make the meaning of the phrase superfluous. HHSC does not believe that the legislature would have decided to enact legislation that only confirms current law. Because the legislature cannot be presumed to have enacted superfluous law HHSC believes that it is appropriate to further define "another adult" consistent with the legislative purpose, §311.021, Government Code. As further explained in the background and justification section of this preamble, this rule is a clarification of program policy that was provoked by HHSC's discovery of provider practices that were not in conformity.

Under the adopted rule, "another adult" may be, but is not necessarily required to be, a person who is enumerated in §32.001(a), Family Code, as a person who is authorized to make medical decisions for a child in the absence of a parent or guardian. HHSC's understanding of legislative intent, however, was that "another adult" cannot be a provider of Medicaid services or by extension be employed by or affiliated with a provider of Medicaid services for which reimbursement is sought.

BACKGROUND AND JUSTIFICATION

The new rule is adopted as a result of HHSC staff's discovery that the practices of some providers in the state are not in conformity with the provisions of state law, agency rule, and long-standing agency policy governing parental accompaniment of children under the age of 15. Specifically, HHSC has determined that some EPSDT providers or their employees were accompanying children on trips furnished by MTP and performing EPSDT services without a parent or guardian present. Among the reasons offered to justify these practices is the inability of parents to take time off during the work day to attend an EPSDT visit or screening and the lack of service opportunities being provided at times more convenient to the parent. As discussed below, these practices are inconsistent with the legislative intent in enacting §32.024(s) of the Human Resources Code.

Also, there may be a lack of awareness or misunderstanding on the part of some Medicaid recipients regarding the various options available for therapy services. Some EPSDT providers perform services at times that are more convenient to the parent. Also, some EPSDT services--some therapy services for example--can be provided in the Medicaid recipient's home.

The adopted rule will ensure consistency in the delivery of EPSDT and MTP services and will ensure that parents or guardians may designate another adult to accompany the child, including those persons enumerated in §32.001(a), Family Code, who may make medical decisions for a child in the absence of a parent or guardian. A parent or guardian may not, however, designate as an authorized adult a Medicaid service provider or a person who is employed by or affiliated with a Medicaid service provider for which reimbursement is sought.

A. Services provided in EPSDT program

The adopted rule is authorized in part by and is intended to implement §32.024(s)(2), Human Resources Code, which requires either a parent, guardian, or "another adult, including an adult related to the child, authorized by the child's parent or guardian, to accompany the child" to an EPSDT visit or screening as a condition for reimbursement. HHSC construes the phrase "another adult" to include a person enumerated in §32.001(a), Family Code, which lists persons who are authorized to make medical decisions for a child in the absence of a parent or guardian or a different adult who is not among the persons enumerated in §32.001(a), Family Code. However, HHSC does not construe the phrase "another adult" to include a provider of EPSDT services or someone employed by or affiliated with a provider of EPSDT services for which reimbursement is sought.

1. Provider is not included in phrase "another adult"

Section 32.024(s), Human Resources Code, was enacted by House Bill (HB) 1285 during the 76th Legislative Session in 1999. The bill as filed did not include the phrase "another adult" set out in Subdivision (2); the phrase was added as part of a house committee substitute for the bill. The "Background and Purpose" section of the Bill Analysis for the enrolled version of the bill and the House Research Organization bill analysis of the engrossed version of the bill indicate that the principal purposes of the bill were to prevent possible provider fraud and to promote parental involvement in making medical decisions regarding health care for children enrolled in the EPSDT program. *See* House Comm. on Public Health, Bill Analysis, Texas HB 1285, 76th Leg., R.S. (1999); House Research Organization, Bill Analysis, Texas HB 1285, 76th Leg., R.S. (1999).

The evident legislative intent in enacting §32.024(s) of the Human Resources Code was to prevent provider fraud, waste, and abuse by prohibiting an EPSDT provider from being the only adult present when EPSDT services are provided. Additionally, it is apparent that the Legislature intended to promote the safety and well-being of children receiving services. This is consistent with the language of §531.02414(e), Government Code, which directs the Executive Commissioner of HHSC "to adopt rules to ensure the safe and efficient provision of nonemergency transportation services under the medical transportation program." Finally, the Legislature intended to promote greater parental involvement, either through direct participation by a parent or guardian or through the involvement of another adult authorized by a parent or guardian to accompany the child if a parent or guardian cannot be present. Because the apparent legislative intent was to address provider conduct that created a risk of fraud or abuse or that potentially placed the safety of children at risk, HHSC believes that in order to effectuate the legislative intent the phrase "another adult" cannot be a provider of services or a person employed by or affiliated with a provider of services for which reimbursement is sought.

2. Phrase "another adult" includes persons enumerated in §32.001(a), Family Code

Section 32.024(s), Human Resources Code, does not define "another adult." However, the legislative history of the bill enacting the provision indicates that the Legislature enacted it with the Family Code in mind. Specifically, the legislature took into account the provisions of the Family Code that authorize another adult to make medical and health care decisions for a child in the absence of a parent or guardian. *See* House Research Organization, Bill Analysis, Texas HB 1285, 76th Leg., R.S. (1999).

The preamble also noted that §151.001, Family Code, sets out the rights and duties of a parent of a child, including the right to consent to the child's medical and dental care. Also noted in the preamble to the proposed rule, §32.001(a), Family Code, enumerates the persons who are statutorily authorized to consent to the medical treatment of a child in the absence of a parent or legal guardian.

Consistent with long-standing canons of statutory construction, because §32.024(s), Human Resources Code, and §32.001(a) and §151.001, Family Code, all deal with similar subject matter, namely consent to medical care, treatment, and services for a child, they should be construed together. Therefore, HHSC believes that the phrase "another adult" in §32.024(s) of the Human Resources Code should be read to include, at a minimum, the list of persons enumerated in §32.001(a), Family Code, who may consent to medical treatment for a child in the absence of a parent or guardian. However, because the legislature did not so limit the provision, and to effectuate apparent legislative intent, the rule allows an adult who is authorized by the parent or legal guardian to accompany their child provided that person is not the provider of services or a person employed by or affiliated with the provider.

B. Services provided under the Medical Transportation Program

The Medical Transportation Program provides "nonemergency transportation services to and from covered health care services, based on medical necessity, to recipients under the Medicaid program, the children with special health care needs program (established pursuant to Chapter 35, Title 2, Health and Safety Code), and the transportation for indigent cancer patients program, who have no other means of transportation." Government Code, §531.02414(a)(1). Title 1, Part 15, Chapter 380 sets out the rules that govern the Medical Transportation Program, including provisions governing eligibility, limitations, and exclusions.

Section 380.207 is being adopted in a companion rule to ensure that the provisions of that section are consistent with the provisions of the new §354.1133. This amendment to Chapter 380 is adopted elsewhere in this issue of the *Texas Register.*

COMMENTS

During the public comment period, which included a public hearing in Austin on July 27, 2012, HHSC received comments from approximately 130 individuals and the following organizations: Advocates for Patient Access, Inc., McGinnis, Lochridge & Kilgore, L.L.P., and OPIRA, a Texas trade association for ORF (OPT/ST) and CORF providers. A summary of the comments and HHSC's responses follow.

Comment: One commenter, a Texas trade association consisting of therapy providers, has stated its support for HHSC's actions to adopt and enforce quality guidelines to reduce and address questionable or overutilization of services. The association believes that it is in a child's best interest to enforce provisions requiring an adult who is not the provider to accompany the child to therapy services. It is further their belief that an active parent/guardian therapist relationship, fostered by participation of the parent in the treatment session, significantly benefits the child.

Response: HHSC appreciates the comment. HHSC agrees that parental participation is important and that it is in the child's best interest to have an adult other than the provider present.

Comment: HHSC received a number of comments expressing concern that many parents are unable to provide transportation themselves because they do not own a vehicle.

Response: HHSC appreciates these comments and notes that the Medical Transportation Program (commonly referred to as MTP) was established specifically to provide transportation for eligible individuals who are unable to transport themselves or their child(ren) to authorized health appointments. A parent can contact MTP using a toll free number and receive assistance in arranging for transportation on behalf of an eligible child. MTP arranges for transportation using mass transportation, contracted transportation service area providers, or by offering mileage reimbursement. Some EPSDT providers perform services at times that are more convenient to the parent. Also, some EPSDT services--some therapy services for example--can be provided in the Medicaid recipient's home.

Comment: Many commenters noted that it is often difficult for parents to be present during medical transportation or EPSDT appointments. Some parents are unable to take time off from work. Other parents must remain in the home to care for other children or have disabilities that prevent them from leaving the home. These commenters stressed the importance of allowing children to receive medical transportation and EPSDT services even when parents cannot accompany the child.

Response: HHSC is aware that some parents cannot be present for every MTP-furnished ride or EPSDT visit, but, as noted above, the agency also acknowledges that the Texas Legislature has imposed a primary duty on parents to participate in the care their children receive and that the taxpayers pay for. Parental participation is regularly cited as a critical factor in the successful treatment of childhood disease and illness, but parental presence also assures the safety of children who receive care.

The reasons for a parent's absence may be beyond the parent's control. The rule--like the legislation upon which it is based--therefore recognizes that a parent must have the ability to designate another person to stand in the parent's place during an MTP-furnished ride or EPSDT visit or screening if the parent is unable to fulfill his or her responsibility. The rule accomplishes this by allowing a parent or guardian to authorize another responsible adult to accompany a child. The allowance of an authorized adult gives parents the opportunity to manage other important obligations, such as work or childcare, while ensuring that the child is safe. However, while a parent or guardian can designate another adult to accompany a child, HHSC believes that the legislative intent when enacting §32.024(s) was that the other adult cannot be the provider or an affiliate of the provider of medical transportation or EPSDT benefits. This prohibition in the rule ensures the health and safety of children who are not accompanied by parents or guardians.

HHSC understands that parents may not be able to accompany a child to every health care appointment. Nonetheless, the agency has an obligation to ensure compliance with state law and that an adult who can essentially stand in the shoes of the parent is present. Some EPSDT providers perform services at times that are more convenient to the parent. Also, some EPSDT services--some therapy services for example--can be provided in the Medicaid recipient's home. If parents are unable to accompany a child to an appointment due to other obligations, they may be able to arrange services through one of these options.

Comment: Several commenters expressed concern that the prohibition on providers serving as authorized adults will cause children to forgo needed health care appointments. One commenter, an EPSDT provider, stated that there has been a substantial drop in appointment attendance since HHSC began monitoring and strictly enforcing compliance with the prohibition on providers under §32.024(s) of the Human Resources Code.

Response: The comment implies that HHSC's current enforcement of policies codified in the adopted rule have reduced clients' access to services. The commenter did not supply nor has HHSC become otherwise aware of a reduction in access to medically necessary services.

The policy clarified by this rule is not intended to erect barriers to prevent children from receiving medically necessary health care and as noted above parents have several options available to them, including requesting services in the home. HHSC appreciates the importance of children attending their necessary medical appointments; however allowing providers to accompany children in place of a parent or guardian is inconsistent with legislative intent. The principal purpose of §32.024(s) of the Human Resources Code is to prevent possible provider fraud and to promote children's safety and parental involvement in medical care and decision making. While some providers may have previously arranged for their employees to serve as authorized adults for children receiving medical transportation or an EPSDT service or benefit, this practice is not consistent with the law and the intent of the legislature.

Comment: One commenter asserted that the proposed rule imposes a new policy standard for parental accompaniment which has not been previously recognized or enforced and that the promulgation of the proposed rule is beyond the authority granted to HHSC under applicable existing law and is in direct violation of a court-ordered injunction.

Response: HHSC respectfully disagrees. Contrary to the commenter's assertion, HHSC has the authority to promulgate this rule pursuant to the following statutes: Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; Human Resources Code, §32.021, and Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas; and Government Code, §531.02414(e), which directs the Executive Commissioner of HHSC to adopt rules to ensure the safe and efficient provision of nonemergency transportation services under the medical transportation program.

The agency's interpretation of §32.024(s) of the Human Resources Code, as reflected in this rule, is consistent with the intent of the Legislature and, HHSC believes, is the only reasonable interpretation that can be applied to the statute. As discussed in detail above, §32.024(s) was enacted by HB 1285 during the 76th legislative session.

The House Research Organization analysis for HB 1285 explains that one of the purposes of the statute was to prevent provider fraud and abuse. Specifically, the analysis states: "By not requiring the presence of a parent or guardian, current law creates the potential for fraud and abuse of the Medicaid system and of the children it services."

Medicaid fraud and abuse laws and regulations typically target provider behavior and actions that result in inappropriate and unnecessary expenditures of state and federal funds. These laws and regulations also protect the health and safety of Med-

icaid recipients, particularly vulnerable recipients such as children, the elderly, and persons with disabilities. The statute, however, also places duties on Medicaid providers as a condition to payment of certain Medicaid claims. Specifically, the statute requires a provider of EPSDT services to ensure that a parent, legal guardian, or other responsible adult accompanies a child to an appointment before a claim can be submitted and paid.

Because the Legislature specifically intended to address potential fraud in the Medicaid program and determined that parental presence and involvement should be a principal condition to payment of a Medicaid claim, HHSC believes the only reasonable interpretation of the phrase "another adult" in the statute is that the phrase does not include the Medicaid provider or a person employed or affiliated with the Medicaid provider. To the read the statute otherwise would, in HHSC's opinion, render it meaningless.

This interpretation is further supported by comments made by Senator Jane Nelson, the sponsor of HB 1285, during a Senate Health and Human Services Committee hearing held on May 8, 2012. During a discussion of §32.024(s), Senator Nelson observed, "I don't think (the authorized adult) has to be the parent. It just can't be the provider." She later restated this as follows: "I want an adult there that is not the provider that is looking out for that child." Senator Nelson's remarks are consistent with the legislative history for §32.024(s), which all indicate that the only appropriate interpretation is that the authorized adult cannot be the Medicaid provider who performs the service.

The temporary injunction referred to by the commenter does not enjoin HHSC from adopting this rule.

Comment: One commenter expressed concern that the rule regulates the provision of transportation services provided to non-Medicaid clients as well as to Medicaid clients.

Response: This rule only regulates transportation services provided to children through MTP (children receiving services under Medicaid, the Children with Special Health Care Needs program, or the Transportation for Indigent Cancer Patients program). The transportation arrangements of children who are not eligible for one of these programs fall outside the scope of this rule.

Comment: Several parents commented that they would prefer for their children to be transported to EPSDT appointments by the EPSDT provider rather than using the transportation available under MTP. They stated that they are comfortable allowing the provider to transport and accompany their children because the children have formed a bond with the provider's employees.

Response: HHSC encourages the parent and child to build a good relationship with the health care provider. The agency believes that a stable and trustful relationship with a provider will facilitate the best care possible for the child. However, federal law prohibits Medicaid providers from offering inducements to Medicaid recipients that are likely to influence the Medicaid recipient's choice of a provider. *See* §1128A(a)(5) of the Social Security Act. HHSC believes that the offering of transportation by an EPSDT provider is such a prohibited inducement.

Furthermore, the cost of these inducements inevitably increases the cost of health care services that taxpayers must fund and raises quality concerns. Providers may have an economic incentive to offset additional costs attributable to the inducement by providing unnecessary services or substituting cheaper or lower quality services. Federal law entitles an eligible Medicaid recipient to receive transportation to and from medically necessary health care appointments at no cost to the recipient.

For these reasons, transportation services provided to eligible recipients must be provided by an entity contracted with HHSC to provide or furnish transportation services. Providers or affiliates of EPSDT providers cannot furnish such transportation or be authorized by the parent or guardian to accompany the child during transportation.

Comment: One commenter suggested that HHSC allow a parent to keep the names of two authorized adults on file with MTP staff. The commenter notes that there are occasions when an emergency or other sudden event prohibits the authorized adult from being able to accompany the child. Frequently, when the parent attempts to notify MTP that another individual is authorized as a replacement, the request is not processed in time to accommodate the change, resulting in missed appointments. The commenter also suggests that HHSC allow these change requests one to two hours before a scheduled appointment.

Response: HHSC agrees with the commenter and recognizes that a parent or guardian may need to have the option of designating an alternate person to serve as the authorized adult. Therefore HHSC has revised 1 TAC §380.207, which is being concurrently adopted with this rule, to allow a Medicaid recipient to provide MTP with the name of an authorized adult and one alternative. HHSC believes that by allowing the designation of two authorized adults the time constraint issue raised by the commenter should be alleviated.

Comment: One commenter is unclear whether the definition of provider in the proposed rule includes family members enrolled as Individual Transportation Providers (ITPs).

Response: ITPs, also known as Individual Volunteer Contractors (IVCs), are not included in the definition of provider under this rule. An ITP/IVC is not a contracted MTP service vendor. Rather, an ITP/IVC is an individual who receives mileage reimbursement at a prescribed rate for the medical transportation of an MTP client. An ITP/IVC can be designated as the authorized adult as long as the ITP/IVC is not the provider of the service or an affiliate.

Comment: One commenter seeks confirmation that the rule applies only to transportation services and EPSDT appointments. The commenter indicated that a child may have to receive other types of health care services, such as chronic health care services, and is unclear whether this rule will govern such services.

Response: It is unclear what the commenter meant by chronic health care services. Any service provided under EPSDT or MTP is governed by this rule.

STATUTORY AUTHORITY

The new rule is adopted under Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; the Human Resources Code §32.021 and Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas; and Government Code §531.02414(e), which directs the Executive Commissioner to adopt rules to ensure the safe and efficient provision of services in the Medical Transportation Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon
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CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §371.1000, concerning Provider Re-Enrollment or Provider Contract Modification; §371.1621, concerning Provider Enrollment; §371.1623, concerning Criminal History Checks; §371.1625, concerning Use of Criminal History Record Information; and §371.1627, concerning Administrative Review of Rejection of Provider Enrollment by Reason of Criminal History. The repeals are adopted without changes to the proposal as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8376).

HHSC also adopts new §§371.1001, 371.1003, 371.1005, 371.1007, 371.1009, 371.1011, 371.1013, and 371.1015, concerning provider disclosure and screening requirements. New §§371.1003, 371.1005, and 371.1009 are adopted with changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8376) and will be republished. New §§371.1001, 371.1007, 371.1011, 371.1013, and 371.1015 are adopted without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8376) and will not be republished.

HHSC intends that any obligations or requirements that accrued under Chapter 371, Subchapter E, before the effective date of these rules will be governed by the prior rules in Subchapter G, and that those rules continue in effect for this purpose. HHSC does not intend for the repeal or enactment of the rules in Subchapter G to affect the prior operation of the rules; any prior actions taken under the rules; any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under the rules; any violation of the rules or any penalty, forfeiture, or punishment incurred under the rules before their amendment or repeal; or any investigation, proceeding, or remedy concerning any privilege, obligation, liability, penalty, forfeiture, or punishment. HHSC additionally intends that any investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the rules had not been repealed or amended.

HHSC intends that should any sentence, paragraph, subdivision, clause, phrase, or section of the new rules in Subchapter E be determined, adjudged, or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of the subchapter as a whole, or any part or provision hereof other than the part so declared to be unconstitutional, illegal, or invalid, and shall not affect the validity of the subchapter as a whole.

Background and Justification

The existing rules in Chapter 371 include various provisions to ensure Medicaid and other HHS program integrity by discovering, preventing, and correcting fraud, waste, and abuse.

The new rules in Chapter 371, Subchapter E, in part, are adopted in light of recent state and federal legislation, including the federal Patient Protection and Affordable Care Act (ACA); the Texas Human Resources Code §32.0322 and §32.047; and the Texas Health and Safety Code §62.1561.

The new federal provisions include:

- Pre- and post-enrollment site visits conducted as part of provider enrollment in accordance with the level of risk associated with that provider type.

- Background check requirements and fingerprinting if required.

- Enhanced screening and verification requirements for high risk applicants.

- Additional applicant disclosure requirements.

- Collection of application fees from institutional providers as described in federal rule.

- Sharing of collected information between state programs and the federal government.

The repeals of §§371.1621, 371.1623, 371.1625, and 371.1627 are adopted to remove them from Subchapter G and place them with other provider enrollment requirements in Subchapter E.

HHSC made minor grammatical corrections to the proposed rule language as follows:

- In §371.1003(1), added the article "a" before the phrase "Medicaid program."

- In §371.1005(c), removed some extraneous words in front of the phrase "potential adverse actions."

- In §371.1009(b)(2), changed "site visits" to "site visit."

Comments

At a public hearing held on November 2, 2012, HHSC received comments from stakeholders. Comments were received from the Texas Association for Home Care and Hospice and KidsCare Therapy.

A summary of the comments and HHSC's responses follow:

Comment: The rules require information about any former provider or any person for which the applicant had an ownership or control interest referenced in §371.1005(c). This information could be irrelevant and impossible for the applicant to obtain. It could include every pending or former sanction or adverse action regarding the provider related to Medicaid or other HHS contracts.

Response: This subsection regarding current and former ownership by the enrolling provider is required by federal law. HHSC expects an applicant to be aware of sanctions against other entities in which it owns a controlling interest or of information that the provider could obtain through due diligence. No change was made to the rule in response to this comment.

Comment: Regarding §371.1007(b)(2), a commenter asked for clarification of the provision that HHSC-OIG may adjust a provider's screening level if the provider has failed to repay an overpayment, if the provider is working with HHSC to resolve the overpayment. The commenter asked if a pending dispute

at the time of an application or a subsequent resolution of the dispute in the applicant's favor affects the risk level.

Response: HHSC-OIG may adjust the risk level based on failure to repay an overpayment. The rule language tracks federal regulations, 42 C.F.R. §455.450(e)(1). Application review will proceed on a case-by-case basis and may allow discussion and resolution prior to a recommendation being made. No change was made to the rule in response to this comment.

Comment: A commenter noted that site visits are a requirement for initial licensure and every three years when audits or surveys are performed, yet some organizations have been open for years and have never had an initial site visit performed by a licensing regulatory agency. The commenter expressed concerns that new pre- and post-enrollment site visit requirements were being imposed by this rule under those circumstances. The commenter was concerned that coordination of site visits had not been thought through sufficiently or coordinated with licensing regulatory agencies. Finally, the commenter expressed concern that extra staff would be needed and costs incurred to the state to perform pre- and post-enrollment site visits.

Response: Pre- and post-site visits are required for all providers categorized in the moderate or high risk category according to federal law. The federal regulations require each State to assign a risk category to Medicaid-only and CHIP-only program providers. Pre- and post-site visits are required on moderate and high risk providers. The issue of coordination between affected entities has been considered and implementation is in process. HHSC-OIG will coordinate Medicare site visits and other agency site visits where possible in order to complete pre- and post-enrollment site visits as required by law. No change was made to the rule in response to this comment. The costs for performing the site visits required pursuant to the ACA will be offset by the application fee collected from institutional providers and supplemented by federal funds.

Comment: Concerning §371.1011(d)(4), a commenter requested clarification regarding the intent of the requirement to reapply if a provider has not actively participated in Medicaid for the previous 12 months.

Response: If a provider fails to file claims within a 12-month time frame, a new application would be required to ensure the provider is still eligible to participate. Section 371.1011(d)(4) does not require denial. HHSC-OIG recommends that any provider who meets this circumstance should provide supplemental information with the application; HHSC-OIG will consider any extenuating circumstances. No change was made to the rule in response to this comment.

Comment: A commenter asked how HHSC-OIG will accomplish the provision in §371.1009, which states that OIG will verify all items regarding an applicant, including the status of professional licensure, certification, or accreditation and all of its employees and contractors.

Response: HHSC will include this disclosure requirement in the application process, which is the same process currently in place. No change was made to the rule in response to this comment.

Comment: A commenter expressed concern that applicants whose applications are denied are not given due process and, as a result, this gives too much discretion to the agency and creates a bad precedent.

Response: HHSC-OIG allows for an informal desk review of most denial recommendations. A denial recommendation does not result in a deprivation of property, and as such, it does not trigger any right to formal due process. OIG must make the best and most efficient use of its resources and believes that the administrative burden of granting full due process for complaints about enrollment matters would not serve any public benefit. Any agency action that would deprive a person of property is classified as a sanction, and all persons subject to sanctions are afforded full due process. For the reasons previously stated, no changes are made in response to this comment.

SUBCHAPTER E. OPERATING AGENCY RESPONSIBILITIES RULE

1 TAC §371.1000

Legal Authority

The repeal is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Human Resources Code §32.0322, which directs HHSC to establish certain provider screening, disclosure, and verification criteria by rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2012.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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SUBCHAPTER E. PROVIDER DISCLOSURE AND SCREENING

1 TAC §§371.1001, 371.1003, 371.1005, 371.1007, 371.1009, 371.1011, 371.1013, 371.1015

Legal Authority

The new sections are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Human Resources Code §32.0322, which directs HHSC to establish certain provider screening, disclosure, and verification criteria by rule.

§371.1003. Definitions.

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

(1) Applicant--An individual or an entity that has filed an enrollment application to become a provider, re-enroll as a provider, or enroll a new practice location in a Medicaid program or the Children's Health Insurance Program.

(2) Children's Health Insurance Program (CHIP)--The Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. §§1397aa, et seq.) and Chapter 62 of the Health and Safety Code.

(3) Enrollment application--A form prescribed by the Texas Health and Human Services Commission (HHSC) that a provider or applicant submits to HHSC or its designee to enroll or re-enroll as a provider.

(4) Health and human services agency--A state agency identified in §531.001(4) of the Government Code.

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

(6) Medicaid--The medical assistance program, a state and federal cooperative program authorized under Title XIX of the Social Security Act that pays for certain medical and health care costs for people who qualify.

(7) Medical assistance--A medical or health care related service, item, benefit, or supply.

(8) Person--Any legally cognizable entity, including an individual, firm, association, partnership, limited partnership, corporation, agency, institution, MCO, Special Investigative Unit, CHIP participant, trust, non-profit organization, special-purpose corporation, limited liability company, professional entity, professional association, professional corporation, accountable care organization, or other organization or legal entity.

(9) Provider--An applicant that successfully completes the enrollment process outlined in this chapter, Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment), if applicable, or another health and human services program.

(10) Provider agreement--An agreement between HHSC and a provider wherein the provider agrees to certain contract provisions as a condition of participation.

§371.1005. Disclosure Requirements.

(a) An applicant must disclose in its enrollment application the identity of any person or entity as requested by HHSC.

(b) The applicant's disclosures must identify every person whose identity must be disclosed pursuant to the Affordable Care Act, Title 42 of the Code of Federal Regulations, or state statute or administrative rule, as amended. Such disclosures include but are not limited to owners, certain subcontractors, creditors, managers, and agents.

(c) An applicant must disclose in its enrollment application every person that previously had an ownership or control interest in the applicant but whose interest was transferred to another person, if the person's former interest was transferred to an immediate family member or to a member of the person's household and the person's former interest was transferred within one year before or at any time after receiving notice of any potential adverse actions by a governmental entity against the person or against a provider for which the person has or had an ownership or control interest.

(d) An applicant must disclose in the enrollment application all information required by state or federal law or regulation, and all additional information requested by HHSC or the HHSC-OIG, in its discretion, during the provider screening and enrollment process.

(e) If any information required to be disclosed under this section changes during the processing of an enrollment application, the applicant or provider must disclose that information pursuant to §352.21 of this title (relating to Duty to Report Changes).

(f) A failure by an applicant, provider, or person to meet any of the disclosure requirements specified in this section constitutes a material non-disclosure of relevant information.

(g) HHSC-OIG may use information submitted by another health and human services agency that relates to information required to be disclosed in lieu of requiring another submission of the same information by the applicant.

§371.1009. Verifications Required for Each Screening Level.

(a) For an applicant or provider assigned a screening level of "Limited," HHSC-OIG verifies the accuracy and completeness of the information in or related to the enrollment application, information about the applicant contained in state or federal records, including criminal history records, and any additional information requested of the applicant by HHSC-OIG.

(b) For an applicant assigned a screening level of "Moderate," HHSC-OIG:

(1) verifies all items described in subsection (a) of this section; and

(2) performs at least one unscheduled and unannounced pre- and post-enrollment site visit, as described in subsection (d) of this section and in accordance with §352.9 of this title (relating to Screening Levels), if applicable, as described in subsection (d) of this section.

(c) For an applicant or provider assigned a screening level of "High," HHSC or HHSC-OIG performs:

(1) all the verifications described in subsections (a) and (b) of this section; and

(2) a fingerprint-based criminal history check, in the form and manner prescribed by state or federal law, of each person that is an individual and has an ownership or control interest as defined in §371.1005 of this subchapter (relating to Disclosure Requirements) in the applicant.

(d) An unscheduled and unannounced pre- or post-enrollment site visit conducted in accordance with subsections (b) and (c) of this section verifies compliance with state and federal law, rule, and policy governing the Medicaid and CHIP programs. Documents compiled, subpoenaed, or maintained by the HHSC-OIG in connection with a site visit are confidential pursuant to Texas Government Code §531.1021(g) and (h).

(e) HHSC-OIG, in its sole discretion, may accept previously submitted fingerprints if an individual has been subjected to a fingerprint-based criminal history check by a licensing or regulatory authority or by another state's Medicaid, CHIP, or medical assistance program and the results are made available to HHSC.

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 G. ADMINISTRATIVE ACTIONS AND SANCTIONS
DIVISION 1. GENERAL PROVISIONS

1 TAC §§371.1621, 371.1623, 371.1625, 371.1627

Legal Authority

The repeals are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Human Resources Code §32.0322, which directs HHSC to establish certain provider screening, disclosure, and verification criteria by rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 380. MEDICAL TRANSPORTATION PROGRAM
SUBCHAPTER B. ELIGIBILITY, PROGRAM SERVICES, PROCESSES, ADDITIONAL TRANSPORTATION CONNECTED WITH AN AUTHORIZED TRIP, LIMITATIONS, AND EXCLUSIONS

1 TAC §380.207

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §380.207, concerning program limitations in the Medical Transportation Program (MTP). The amendment is adopted with changes to the proposed text as published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4750) and will be republished.

Elsewhere in this issue of the *Texas Register,* HHSC is concurrently adopting new §354.1133, concerning the parental accompaniment requirement for MTP and Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

New §354.1133 clarifies and confirms HHSC policy requiring a parent, a guardian, or another adult authorized by a parent or guardian to accompany a child who receives an EPSDT (known in Texas as Texas Health Steps) service pursuant to 25 TAC Chapter 33 or who receives a service or benefit provided by MTP operated pursuant to 1 TAC Chapter 380. The new rule clarifies and conforms provider practices to HHSC's understanding of the legislative intent of §32.024(s) and (s-1), Human Resources Code--promoting program integrity, ensuring the safety of children receiving services, and encouraging parental involvement in the care of the child. The new rule will supplement or supersede current rules governing parental accompaniment set out in 1 TAC §380.207, which sets out program limitations in MTP, and 25 TAC §33.2 and §33.6, which set out requirements for EPSDT services.

The amendment to §380.207 is adopted to effect two substantive changes. First, the amendment adds language that provides that a recipient is not eligible to receive MTP services if the recipient is not accompanied by a parent, a guardian, or another adult authorized by a parent or guardian, as required by new §354.1133. Second, the amendment adds and deletes language that limits the scope of the provision to recipients aged 15 through 17, rather than recipients under 18.

BACKGROUND AND JUSTIFICATION

The amendment to §380.207 is adopted to ensure that Chapter 380 is consistent with the new §354.1133. The new §354.1133 is adopted as a result of HHSC staff's discovery that the practices of some providers in the state are not in conformity with the provisions of state law and long-standing agency policy governing parental accompaniment of children under the age of 15. Specifically, HHSC has determined that some EPSDT providers or their employees were accompanying children on trips furnished by MTP and performing EPSDT services without a parent or guardian present. Among the reasons offered to justify these practices is the inability of parents to take time off during the work day to attend an EPSDT visit or screening and the lack of service opportunities being provided at times more convenient to the parent. As stated above, these practices are inconsistent with the legislative intent in enacting §32.024(s) of the Human Resources Code. Also, there may be a lack of awareness or misunderstanding on the part of some Medicaid recipients regarding the various options available for therapy services.

The new rule and the amendment will ensure consistency in the delivery of EPSDT and MTP services and will ensure that parents or guardians may designate another adult to accompany the child, including those persons enumerated in §32.001(a), Family Code, who may make medical decisions for a child in the absence of a parent or guardian. A parent or guardian may not, however, designate as an authorized adult a Medicaid service provider or a person who is employed by or affiliated with a Medicaid service provider for which reimbursement is sought.

COMMENTS

During the public comment period, which included a public hearing in Austin on July 27, 2012, HHSC received comments from approximately 130 individuals and the following organizations: Advocates for Patient Access, Inc., McGinnis, Lochridge & Kilgore, L.L.P., and OPIRA, a Texas trade association for ORF

(OPT/ST) and CORF providers. A summary of the comments and HHSC's responses follow.

Comment: One commenter, a Texas trade association consisting of therapy providers, has stated its support for HHSC's actions to adopt and enforce quality guidelines to reduce and address questionable or overutilization of services. The association believes that it is in a child's best interest to enforce provisions requiring an adult who is not the provider to accompany the child to therapy services. It is further their belief that an active parent/guardian therapist relationship, fostered by participation of the parent in the treatment session, significantly benefits the child.

Response: HHSC appreciates the comment. HHSC agrees that parental participation is important and that it is in the child's best interest to have an adult other than the provider present.

Comment: HHSC received a number of comments expressing concern that many parents are unable to provide transportation themselves because they do not own a vehicle.

Response: HHSC appreciates these comments and notes that the Medical Transportation Program (commonly referred to as MTP) was established specifically to provide transportation for eligible individuals who are unable to transport themselves or their child(ren) to authorized health appointments. A parent can contact MTP using a toll free number and receive assistance in arranging for transportation on behalf of an eligible child. MTP arranges for transportation using mass transportation, contracted transportation service area providers, or by offering mileage reimbursement. Some EPSDT providers perform services at times that are more convenient to the parent. Also, some EPSDT services--some therapy services for example--can be provided in the Medicaid recipient's home.

Comment: Many commenters noted that it is often difficult for parents to be present during medical transportation or EPSDT appointments. Some parents are unable to take time off from work. Other parents must remain in the home to care for other children or have disabilities that prevent them from leaving the home. These commenters stressed the importance of allowing children to receive medical transportation and EPSDT services even when parents cannot accompany the child.

Response: HHSC is aware that some parents cannot be present for every MTP-furnished ride or EPSDT visit, but, as noted above, the agency also acknowledges that the Texas Legislature has imposed a primary duty on parents to participate in the care their children receive and that the taxpayers pay for. Parental participation is regularly cited as a critical factor in the successful treatment of childhood disease and illness, but parental presence also assures the safety of children who receive care.

The reasons for a parent's absence may be beyond the parent's control. The rule--like the legislation upon which it is based--therefore recognizes that a parent must have the ability to designate another person to stand in the parent's place during an MTP-furnished ride or EPSDT visit or screening if the parent is unable to fulfill his or her responsibility. The rule accomplishes this by allowing a parent or guardian to authorize another responsible adult to accompany a child. The allowance of an authorized adult gives parents the opportunity to manage other important obligations, such as work or childcare, while ensuring that the child is safe. However, while a parent or guardian can designate another adult to accompany a child, HHSC believes that the legislative intent when enacting §32.024(s) was that the other adult cannot be the provider or an affiliate of the provider of medical transportation or EPSDT benefits. This prohibition in the rule ensures the health and safety of children who are not accompanied by parents or guardians.

HHSC understands that parents may not be able to accompany a child to every health care appointment. Nonetheless, the agency has an obligation to ensure compliance with state law and that an adult who can essentially stand in the shoes of the parent is present. Some EPSDT providers perform services at times that are more convenient to the parent. Also, some EPSDT services--some therapy services for example--can be provided in the Medicaid recipient's home. If parents are unable to accompany a child to an appointment due to other obligations, they may be able to arrange services through one of these options.

Comment: Several commenters expressed concern that the prohibition on providers serving as authorized adults will cause children to forgo needed health care appointments. One commenter, an EPSDT provider, stated that there has been a substantial drop in appointment attendance since HHSC began monitoring and strictly enforcing compliance with the prohibition on providers under §32.024(s) of the Human Resources Code.

Response: The comment implies that HHSC's current enforcement of policies codified in the adopted rule have reduced clients' access to services. The commenter did not supply nor has HHSC become otherwise aware of a reduction in access to medically necessary services.

The policy clarified by this rule is not intended to erect barriers to prevent children from receiving medically necessary health care and, as noted above, parents have several options available to them, including requesting services in the home. HHSC appreciates the importance of children attending their necessary medical appointments; however allowing providers to accompany children in place of a parent or guardian is inconsistent with legislative intent. The principal purpose of §32.024(s) of the Human Resources Code is to prevent possible provider fraud and to promote children's safety and parental involvement in medical care and decision making. While some providers may have previously arranged for their employees to serve as authorized adults for children receiving medical transportation or an EPSDT service or benefit, this practice is not consistent with the law and the intent of the legislature.

Comment: One commenter asserted that the proposed rule imposes a new policy standard for parental accompaniment which has not been previously recognized or enforced and that the promulgation of the proposed rule is beyond the authority granted to HHSC under applicable existing law, and is in direct violation of a court-ordered injunction.

Response: HHSC respectfully disagrees. Contrary to the commenter's assertion, HHSC has the authority to promulgate this rule pursuant to the following statutes: Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; Human Resources Code, §32.021, and Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas; and Government Code, §531.02414(e), which directs the Executive Commissioner of HHSC to adopt rules to ensure the safe and efficient provision of nonemergency transportation services under the medical transportation program.

The agency's interpretation of §32.024(s) of the Human Resources Code, as reflected in this rule, is consistent with the

intent of the Legislature and, HHSC believes, is the only reasonable interpretation that can be applied to the statute. As discussed in detail above, §32.024(s) was enacted by HB 1285 during the 76th legislative session.

The House Research Organization analysis for HB 1285 explains that one of the purposes of the statute was to prevent provider fraud and abuse. Specifically, the analysis states: "By not requiring the presence of a parent or guardian, current law creates the potential for fraud and abuse of the Medicaid system and of the children it services."

Medicaid fraud and abuse laws and regulations typically target provider behavior and actions that result in inappropriate and unnecessary expenditures of state and federal funds. These laws and regulations also protect the health and safety of Medicaid recipients, particularly vulnerable recipients such as children, the elderly, and persons with disabilities. The statute, however, also places duties on Medicaid providers as a condition to payment of certain Medicaid claims. Specifically, the statute requires a provider of EPSDT services to ensure that a parent, legal guardian, or other responsible adult accompanies a child to an appointment before a claim can be submitted and paid.

Because the Legislature specifically intended to address potential fraud in the Medicaid program and determined that parental presence and involvement should be a principal condition to payment of a Medicaid claim, HHSC believes the only reasonable interpretation of the phrase "another adult" in the statute is that the phrase does not include the Medicaid provider or a person employed or affiliated with the Medicaid provider. To the read the statute otherwise would, in HHSC's opinion, render it meaningless.

This interpretation is further supported by comments made by Senator Jane Nelson, the sponsor of HB 1285, during a Senate Health and Human Services Committee hearing held on May 8, 2012. During a discussion of §32.024(s), Senator Nelson observed, "I don't think (the authorized adult) has to be the parent. It just can't be the provider." She later restated this as follows: "I want an adult there that is not the provider that is looking out for that child." Senator Nelson's remarks are consistent with the legislative history for §32.024(s), which all indicate that the only appropriate interpretation is that the authorized adult cannot be the Medicaid provider who performs the service.

The temporary injunction referred to by the commenter does not enjoin HHSC from adopting this rule.

Comment: One commenter expressed concern that the rule regulates the provision of transportation services provided to non-Medicaid clients as well as to Medicaid clients.

Response: This rule only regulates transportation services provided to children through MTP (children receiving services under Medicaid, the Children with Special Health Care Needs program, or the Transportation for Indigent Cancer Patients program). The transportation arrangements of children who are not eligible for one of these programs fall outside the scope of this rule.

Comment: Several parents commented that they would prefer for their children to be transported to EPSDT appointments by the EPSDT provider rather than using the transportation available under MTP. They stated that they are comfortable allowing the provider to transport and accompany their children because the children have formed a bond with the provider's employees.

Response: HHSC encourages the parent and child to build a good relationship with the health care provider. The agency believes that a stable and trustful relationship with a provider will facilitate the best care possible for the child. However, federal law prohibits Medicaid providers from offering inducements to Medicaid recipients that are likely to influence the Medicaid recipient's choice of a provider. *See* §1128A(a)(5) of the Social Security Act. HHSC believes that the offering of transportation by an EPSDT provider is such a prohibited inducement.

Furthermore, the cost of these inducements inevitably increases the cost of health care services that taxpayers must fund and raises quality concerns. Providers may have an economic incentive to offset additional costs attributable to the inducement by providing unnecessary services or substituting cheaper or lower quality services. Federal law entitles an eligible Medicaid recipient to receive transportation to and from medically necessary health care appointments at no cost to the recipient.

For these reasons, transportation services provided to eligible recipients must be provided by an entity contracted with HHSC to provide or furnish transportation services. Providers or affiliates of EPSDT providers cannot furnish such transportation or be authorized by the parent or guardian to accompany the child during transportation.

Comment: One commenter suggested that HHSC allow a parent to keep the names of two authorized adults on file with MTP staff. The commenter notes that there are occasions when an emergency or other sudden event prohibits the authorized adult from being able to accompany the child. Frequently, when the parent attempts to notify MTP that another individual is authorized as a replacement, the request is not processed in time to accommodate the change, resulting in missed appointments. The commenter also suggests that HHSC allow these change requests one to two hours before a scheduled appointment.

Response: HHSC agrees with the commenter and recognizes that a parent or guardian may need to have the option of designating an alternate person to serve as the authorized adult. Therefore HHSC has revised the proposed rule to allow a Medicaid recipient to provide MTP with the name of an authorized adult and one alternative. HHSC believes that by allowing the designation of two authorized adults the time constraint issue raised by the commenter should be alleviated.

Comment: One commenter is unclear whether the definition of provider in the proposed rule includes family members enrolled as Individual Transportation Providers (ITPs).

Response: ITPs, also known as Individual Volunteer Contractors (IVCs), are not included in the definition of provider under this rule. An ITP/IVC is not a contracted MTP service vendor. Rather, an ITP/IVC is an individual who receives mileage reimbursement at a prescribed rate for the medical transportation of an MTP client. An ITP/IVC can be designated as the authorized adult as long as the ITP/IVC is not the provider of the service or an affiliate.

Comment: One commenter seeks confirmation that the rule applies only to transportation services and EPSDT appointments. The commenter indicated that a child may have to receive other types of health care services, such as chronic health care services, and is unclear whether this rule will govern such services.

Response: It is unclear what the commenter meant by chronic health care services. Any service provided under EPSDT or MTP is governed by this rule.

STATUTORY AUTHORITY

The amendment is adopted under Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; the Human Resources Code §32.021 and Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas; and Government Code §531.02414(e), which directs the Executive Commissioner to adopt rules to ensure the safe and efficient provision of services in the Medical Transportation Program.

§380.207. Program Limitations.

Recipients are not eligible to receive medical transportation services under the following circumstances:

(1) to and from a day activity, a personal care home or state institution, or a facility participating in another Title XIX program for which the reimbursement rate structure includes transportation funds, except as specified in §380.203(1) of this subchapter (relating to Program Services);

(2) the intended destination is a nursing facility;

(3) the recipient is an inpatient in a health care facility, except as specified in §380.203(1) of this subchapter;

(4) the recipient is under 15 years of age and:

(A) the recipient's parent, guardian, or another adult authorized by the parent or guardian does not accompany the recipient as required by §354.1133 of this title (relating to Parental Accompaniment Requirement); and

(B) the parent or guardian, if authorizing another adult to accompany the recipient, has not provided written authorization on a form prescribed by the Health and Human Services Commission, which will allow for the designation of one authorized adult and one alternate authorized adult;

(5) the recipient is 15 through 17 years of age and not accompanied, unless one of the following conditions exists:

(A) the recipient presents the parent's or legal guardian's signed, written consent for the transportation services to the Regional MTP office or the transportation contractor; and/or

(B) the treatment to which the minor is being transported is such that the law extends confidentiality to the minor for this treatment;

(6) the recipient or another person or entity providing care for the recipient receives direct payment of worker's compensation benefits, U.S. Department of Veterans Affairs benefits, or other third-party resources for transportation to health care services on the recipient's behalf;

(7) the recipient is on limited status, unless the provider has made the referral or the recipient requests family planning services;

(8) TICP diagnostic visits and/or cancer or cancer-related treatments that are provided out-of-state;

(9) the recipient and/or attendant intentionally, knowingly, or recklessly boards the vehicle carrying an illegal knife, a club, handgun or other weapon, as defined in Penal Code, §46.01, on or about his or her person;

(10) a third-party, such as a lodging establishment, provides transportation, meals, and/or lodging at no charge for a recipient and attendant, for a particular appointment; or

(11) an attendant does not accompany the recipient on the MTP-requested trip when a Health Care Provider's Statement of Need, Form 3113 or equivalent, is on file stating the recipient requires an attendant(s).

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 December 12, 2012.

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

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TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 12. LOANS AND INVESTMENTS
SUBCHAPTER A. LENDING LIMITS

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the repeal of §12.2; new §12.2 and §12.12; and amendments to §§12.3, 12.6, and 12.10, concerning lending limits. Section 12.3 and §12.12 are adopted with changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6836) and will be republished. The repeal of §12.2; new §12.2; and amendments to §12.6 and §12.10 are adopted without changes and will not be republished.

The only change to the proposed text is the addition of new subsection (d) to §12.12, for the purpose of creating a temporary exception for credit exposure arising from derivative transactions or securities financing transactions, until May 1, 2013. This change affects no new persons, entities, or subjects other than those previously given notice, and compliance with the adopted section will be less burdensome than under the proposed section. Accordingly, republication of the adopted section as proposed amendments is not required.

The temporary exception of adopted §12.12(d) will provide affected banks with time to adjust their systems and procedures to come into compliance with new requirements. Notwithstanding this exception, the department retains all necessary authority to address credit exposures that present undue concentrations on a case-by-case basis, through existing safety and soundness requirements.

The new and amended rules are adopted for the purpose of applying the lending limit of Finance Code, §34.201, to certain credit exposures arising from derivative and securities financing transactions, to enhance safety and soundness of state banks through quantifying and limiting credit risk incurred in off-balance sheet investment and financing activity, as well as to accommodate new requirements and other changes in federal law.

BACKGROUND

Derivative and securities financing transactions can range from relatively simple to extremely complex. The following descriptions are very general and for the limited purpose of aiding the reader in understanding the intent of the adopted amendments.

Derivative Transactions

A derivative transaction is a financial contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivatives, and any other instrument that poses similar counterparty credit risks.

Derivatives are risk-shifting devices initially created and used to reduce exposure to changes in foreign exchange rates, interest rates, or stock indexes. For example, to mitigate risks that occur from ordinary lending activities, smaller, non-complex banks typically use and rely almost exclusively on derivatives known as "swaps," a simultaneous buying and selling of the same security or obligation. In a low interest rate environment, most borrowers desire fixed rate loans. Most banks prefer making floating rate loans to better match the inevitable changes in interest rates they pay for deposits and wholesale loans that serve as the funding source for customer loans. To allow the borrower to pay a fixed rate, a bank can enter into an interest rate swap with a counterparty, i.e., "swap" its fixed rate loan payment stream for a floating rate payment stream based on the identical principal amount, as a hedge to better control fluctuations in its borrowing costs. In this manner, both the bank and its customer get what they want, risks are contained, and mismatches are avoided.

Thus, derivative investments can be highly useful in managing or hedging existing risk in a bank's loan or investment portfolio. However, because a derivative product can be created by means of an agreement, the types of derivative products that can be developed are limited only by the imagination. Many derivative products available today possess a bewildering complexity and lack of transparency that can result in poor investment decisions by the occasional user. In some instances, a derivative contract may appear to hedge a particular risk but actually increase risk to the institution. Even "plain vanilla" derivatives carry potentially excessive risk if a bank relies too heavily on a single counterparty.

The past decade revealed a series of serious financial losses suffered by county and municipal governments, well-known corporations, banks and mutual funds that had invested in these products. As the prevalence and complexity of the derivatives market ballooned, unexpected shifts in derivative values played a major role in the downturn of the world's financial system, leading to the recent recession.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010) (Dodd-Frank) was aimed at a financial regulatory overhaul that, among other matters, established a more regulated environment for derivatives trading. Because most insured banks use deposits to fund their lending and investment activities, and because catastrophic mistakes by banks can end up costing taxpayers, Dodd-Frank imposes additional requirements on banks to identify the risks being assumed in derivative transactions, evaluate and comprehend those risks, and continuously monitor and manage those risks. Part of the risk identification and management process is determining the potential monetary exposure of the parties under the terms of the derivative instrument, a step sometimes overlooked in the past because money is typically not due until the specified date of performance of a derivative contract. The adopted rules require a state bank to make up-front determinations of potential credit exposure from a derivative transaction, as well as from a securities financing transaction. Federal rules will impose similar requirements on national banks.

Securities Financing Transactions

A securities financing transaction is collateralized lending or borrowing in the form of a repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction. Each of these transaction types are defined and described in connection with discussion of §12.12(c) as adopted.

Both parties to a securities financing transaction are subject to credit risk because the market value of the collateral can change during the life of the loan. In addition, the lender must consider both the creditworthiness of the counterparty and the quality of the underlying collateral. Banks are already expected to maintain a risk management process to ensure that credit risk is effectively identified, measured, monitored, and controlled, but requiring that the aggregate credit exposure to a single counterparty be compared to the lending limit is anticipated to help in controlling this risk.

Dodd-Frank Requirements

Effective January 21, 2013, Section 611 of Dodd-Frank prohibits state banks from engaging in derivative transactions unless "the law with respect to lending limits of the State in which the insured State bank is chartered takes into consideration credit exposure to derivative transactions." Banks have long been encouraged to quantify and limit the off-balance sheet credit risk inherent in a derivative contract, or to avoid over-reliance on a limited number of counterparties, but have not previously been required by law to compare that credit exposure to the lending limit.

Effective July 21, 2012, national banks are subject to similar but broader requirements. Section 610 of Dodd-Frank expanded the statutory definition of "loans and extensions of credit" in 12 U.S.C. 84 to include credit exposure arising from repurchase and reverse repurchase transactions and securities lending and borrowing transactions (collectively, securities financing transactions), as well as derivative transactions.

Measuring and quantifying the potential credit exposure under a derivative transaction or a securities financing transaction is typically accomplished through the use of sophisticated computer models and simulations that only large banks can afford to purchase or develop. Because the department does not have the depth of capital markets expertise that the Office of the Comptroller of the Currency (OCC) possesses, these difficulties led the department to conclude that state action to implement Section 611 of Dodd-Frank should be postponed until the OCC issued its regulations implementing similar requirements under Section 610.

On June 20, 2012, the OCC released its interim final rule to implement Section 610 of Dodd-Frank. Published in the June 21, 2012, edition of the *Federal Register* (77 Fed. Reg. 37265), the rule sets out procedures and methodologies for calculating the credit exposure under these newly covered transactions and requests comments in response to a series of questions regarding how best to address certain ambiguities and difficulties raised by

the requirements of Section 610. In order to reduce the practical burden of these calculations, particularly for smaller banks, the OCC commendably provided different options for measuring credit exposures in new 12 C.F.R §32.9. These alternatives would appear to implement the statutory changes, consistent with safety and soundness and the goals of the statute, but in a manner that should reduce unnecessary new regulatory burden.

Section 610 of Dodd-Frank became effective on July 21, 2012. The interim final rule adopted by the OCC is also effective on July 21, 2012. However, in recognition that national banks will need time to conform their operations to the amendments implementing Section 610, the OCC added a temporary exception to the interim final rule (codified at 12 C.F.R. §32.1(d)) for the transactions covered by Section 610 until January 1, 2013, in order to allow institutions a sufficient period to make adjustments to assure compliance with the new requirements.

On November 14, 2012, the OCC announced that it intends to extend the temporary exception of 12 C.F.R. §32.1(d) from January 1, 2013, to April 1, 2013, when it publishes its final rule, to provide sufficient time for institutions to develop and implement appropriate policies and procedures to comply with these provisions. The OCC also announced that it expects to publish its final rule before the end of this year.

Although Section 611 of Dodd-Frank only requires states to take derivative transactions into consideration for lending limits purposes, the department has recommended incorporating credit exposures arising from both derivative transactions and securities financing transactions in the amendments for three reasons. First, as a safety and soundness measure, the significant credit exposure that can arise from a securities financing transaction should be measured, monitored and limited. Second, the department has recommended that new limits be modeled on the OCC approach under Section 610 of Dodd-Frank (which limits both derivative and securities financing transactions), to take advantage of the deeper capital markets expertise of the OCC and to discourage the potential for regulatory arbitrage (converting from national bank to state bank) based on a perception of weaker state regulation. Finally, the limits on a national bank's ability to engage in securities financing transactions may in any event be indirectly applicable to state banks through application of §24 of the Federal Deposit Insurance Act (12 U.S.C. §1831a) (prohibiting state banks from engaging in activities as principal that national banks cannot engage in, except under certain conditions).

Because the effective date for Section 611 of Dodd-Frank is January 21, 2013, the commission has adopted the amendments as proposed, with the addition of new §12.12(d) creating a temporary exception for compliance until May 1, 2013. If the OCC publishes its revised final rule as anticipated, the department would likely present proposed amendments to the commission for its consideration at a meeting on February 15, 2013, for the purpose of conforming §12.12 with revised 12 C.F.R. §32.9. If the commission concurs and approves publication of the proposal for comment, the commission could adopt the amendments as early as its meeting on April 19, 2013.

DESCRIPTION OF THE ADOPTED RULES

New §12.12, relating to credit exposure arising from derivative and securities financing transactions, is the central provision in this adoption. Section 12.12 is modeled on 12 C.F.R. §32.9, the OCC interim final rule relating to credit exposure arising from derivative and securities financing transactions, as published at 77 FR 37265 (June 21, 2012). All other adopted changes with one minor exception are designed to conform other rules in Chapter 12, Subchapter A, to new §12.12.

Definitions pertaining to Chapter 12, Subchapter A, are contained in §12.2. For purposes of adopted §12.2, the prior definition of borrower was amended and ten new definitions were added. In order to arrange this large number of definitions in alphabetical order, previous §12.2 was repealed in connection with the adoption of new §12.2. However, six of the definitions in adopted §12.2 are unchanged from previous §12.2.

The definition of "borrower" in new §12.2(1) is expanded to include a party to whom the bank has credit exposure arising from a derivative transaction or a securities financing transaction. New §12.2(5) and (14) add definitions of "derivative transaction" and "securities financing transaction," mirroring the definitions added to federal law by Section 610 of Dodd-Frank or by the OCC in revised 12 C.F.R. §32.2. To further implement detailed aspects of these definitions and new §12.12, new definitions are added for "credit derivative," "effective margining arrangement," "eligible credit derivative," "eligible protection provider," "qualifying central counterparty," and "qualifying master netting agreement," similar to how these terms are defined in federal regulations. These terms are used in new §12.12.

Section 12.3 is also a definitional section limited to articulating what is included and what is not included in "loans or extensions of credit" for purposes of the lending limit. The adopted amendment to §12.3 adds new §12.3(a)(10) to include any credit exposure arising from a derivative transaction or a securities financing transaction. Prior §12.3(a)(10) was renumbered as §12.3(a)(11). Further, new §12.3(b)(6) adds intra-day credit exposures arising from a derivative transaction or securities financing transaction as an additional exception to the lending limits for state banks. This exception helps minimize the impact of the lending limit on the payment and settlement of financial transactions and is consistent with the current application of state bank lending limits to certain transactions. For example, existing §12.3(b)(4) and (5) continue to provide that an intra-day overdraft and a sale of Federal funds with a maturity of one day or less are not subject to the lending limit. (Prior §12.3(b)(6) was renumbered as §12.3(b)(7).)

Unrelated to derivative or securities financing transactions, the adoption also amends §12.3(b)(3)(A) to clarify that a relatively recent change in generally accepted accounting principles by Financial Accounting Standards No. 166 does not affect lending limit calculations pertaining to the use of participation agreements.

Section 12.6 relates to transactions not subject to lending limits. The amendment to §12.6 adds new subsection (i) to except from the lending limit credit exposures arising from securities financing transactions in which the securities being financed are certain government securities, specifically those securities in which a state bank may invest without limit pursuant to Finance Code, §34.101(d). These transactions typically involve less risk because of the quality and marketability of the securities employed. This exception may reduce regulatory burden for smaller state banks because it is relatively uncommon for these banks to engage in a securities financing transaction involving securities other than the referenced government securities.

Section 12.10 relates to nonconforming loans. The amendment adds new §12.10(a)(5) to provide that a credit exposure arising from a derivative transaction or securities financing transaction and determined by the internal model method will not be consid-

ered a violation of the lending limit and will be treated as non-conforming if the extension of credit was within the bank's legal lending limit at execution and is no longer in conformity because the exposure has increased since execution. (Credit exposure is always static or decreasing under non-model methods, as discussed in connection with new §12.12.) The adoption renumbers the remaining paragraph in subsection (a) and also makes a conforming change to subsection (b).

New §12.12 sets forth the methodology for calculating the credit exposure arising from a derivative transaction or a securities financing transaction entered into by a state bank for purposes of determining the bank's lending limit. Subsection (b) addresses derivative transactions and subsection (c) addresses securities financing transactions, as described in the following paragraphs. Finally, subsection (d) was added to create a temporary exception to compliance for the purpose of allowing time for state banks to develop and implement appropriate policies and procedures to comply with these provisions.

Limits on Derivative Transactions

The credit exposure arising from a derivative transaction is commonly viewed as the sum of the current credit exposure on the contract or portfolio plus some measure of potential future exposure (PFE). Under new §12.12, the current credit exposure is determined by the mark-to-market value (MTM) of the derivative contract. The current MTM is generally zero at execution of the contract. Subsequent to the execution of the contract, if the MTM value is positive, then the current credit exposure equals that MTM value. If the MTM value is zero or negative, then the current credit exposure is zero.

PFE, on the other hand, recognizes the possibility that the MTM amount may increase over time, based upon changes in market factors. The PFE, when added to the MTM amount, can be viewed as the anticipated ceiling of credit exposure at the execution of a derivative transaction.

New §12.12(b) provides three methods for calculating credit exposure of derivative transactions other than credit derivatives. Unless required to use a specific method by the commissioner pursuant to §12.12(b)(3), a state bank may choose which of these methods it will use. However, a state bank must use the same method for calculating credit exposure arising from all derivative transactions.

Under the first method, the "internal model method," state banks may model their exposures via an internal model. Under this method, the counterparty credit exposure of a derivative transaction would be measured by a model that estimates a credit exposure amount, inclusive of the current MTM. A bank using this approach would calculate its exposure by using the internal model that it considers most appropriate in evaluating the risk associated with derivative transactions. Like the OCC's rule for national banks, the proposal requires the bank's model to be approved for purposes of §53 of the federal capital adequacy guidelines codified as Appendix C to 12 C.F.R. part 325 (or Appendix F to 12 C.F.R. part 208 in the case of a bank that is a member of the Federal Reserve System), or another approved model. Comments are invited on whether this is an appropriate standard or whether another standard would be more suitable.

A state bank that elects to calculate its credit exposure by using the internal model method will be permitted to net credit exposure of derivative transactions arising under the same qualifying master netting agreement, thereby reducing the bank's exposure to the borrower to the net exposure under the master netting agreement.

Second, a state bank may choose to measure the credit exposure arising from a derivative transaction under the "conversion factor matrix method." Under this method, the credit exposure will equal and remain fixed at the PFE of the derivative transaction, as determined at execution of the transaction by reference to a simple look-up table (Table 1). This approach is considerably less burdensome than the internal model method because a state bank would not have to establish statistical simulations of future PFE calculations.

While the simplicity and stability of the conversion factor matrix method makes it easy to apply, actual credit exposure can arise during the life of a derivative contract that is not captured under this method. The department believes that the potentially unmeasured risks can be addressed in the supervisory process by examiners appropriately responding to unsafe and unsound concentrations, and that the certainty and simplicity of allowing non-complex banks to "lock in" the attributable exposure at the execution of the contract balance the possible risks.

Under the third method, the "remaining maturity method," the measurement of the credit exposure incorporates both the current MTM and the transaction's remaining maturity (measured in years) as well as a fixed add-on for each year of the transaction's remaining life. Specifically, this method measures credit exposure by adding the current MTM value of the transaction to the product of the notional amount of the transaction, the remaining maturity of the transaction, and a fixed multiplicative factor. These multiplicative factors differ based on product type and are determined by a look-up table (Table 2).

The credit exposure calculated under the remaining maturity method accounts for the diminishing maturity of the transaction as well as the current MTM of the transaction. A state bank may find that any additional burden involved with determining the MTM under this optional method is balanced by the fact that, depending on the MTM, as the maturity decreases, the credit exposure also decreases, thereby permitting additional extensions of credit under the lending limit.

In the case of credit derivatives, in which a state bank buys or sells credit protection against loss on a third-party reference entity, a special rule would apply as set forth in adopted §12.12(b)(2). Specifically, a state bank that uses the conversion factor matrix method or remaining maturity method, or that uses the internal model method without entering an effective margining arrangement with its counterparty as defined in adopted §12.2(6), calculates the counterparty credit exposure arising from credit derivatives by adding the net notional value of all protection purchased from the counterparty on each reference entity. For example, Bank A buys and sells credit protection from and to Bank B on Firms X, Y and Z. No effective margining arrangement exists between the banks. Bank A's net notional protection purchased from Bank B is $50 for Firm X and $100 for Firm Y. Bank A's net protection sold to Bank B is $35 for Firm Z. The lending limit exposure of Bank A to Bank B is $150.

In addition, a state bank would calculate the credit exposure to a reference entity arising from credit derivatives by adding the notional value of all protection sold on the reference entity. For example, Bank C buys and sells credit protection on Firms 1, 2 and 3. Bank C's notional protection sold is $100 for Firm 1, $200 for Firm 2 and $300 for Firm 3. The lending limit exposure

of Bank C to Firm 1 is $100, to Firm 2 is $200 and to Firm 3 is $300.

However, the bank may reduce its exposure to a reference entity by the amount of any "eligible credit derivative," defined in adopted §12.2(7), purchased on that reference entity from an "eligible protection provider," defined in adopted §12.2(8). In the last example, if Bank C purchases protection on Firm 3 from an eligible protection provider in the amount of $25 via an eligible credit derivative, Bank C can reduce its $300 lending limit exposure to Firm 3 to $275.

Although the internal model method, the remaining maturity method, and the conversion factor matrix method will generally be available to all state banks, adopted §12.12(b)(3) provides that the commissioner may require use of a specific method to calculate credit exposure based on a finding that such method is necessary to promote the safety and soundness of the bank.

Limits on Securities Financing Transactions

Adopted §12.12(c) provides state banks with two options for determining the credit exposure of securities financing transactions, defined as repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions by adopted §12.2(14). These methods recognize that the size of the state bank and complexity and volume of the securities financing transactions engaged in by the state bank may warrant different approaches. As with derivative transactions, unless required to use a specific method pursuant to adopted §12.12(c)(2), a state bank may choose which of the two methods it will use and would be required to use this same method for calculating credit exposure arising from all securities financing transactions.

The first option, the "internal model method," provides that a state bank may calculate the credit exposure of a securities financing transaction by using an internal model approved for purposes of §32(d) of the federal capital adequacy guidelines, or another approved model.

Calculation of the credit exposure under the second option, the "non-model method," is based on the type of securities financing transaction at issue. As with derivative transactions, the department finds that, for non-complex state banks engaged in these transactions, the simpler approach to measuring credit exposure in the non-model method adequately protects the safety and soundness of the state bank while mitigating regulatory burden. The specific method for calculating credit exposure under the non-model method for each type of securities financing transaction is addressed in the following discussion.

Repurchase agreements and securities lending transactions. In a repurchase agreement, also known as a liability repo, a state bank that owns securities borrows funds by selling the specified securities to another party under a simultaneous agreement to repurchase the same securities at a specified price and date. In a securities lending transaction, a state bank lends securities to a counterparty (who may use them to cover a short sale or satisfy some other obligation). A securities loan is collateralized, usually by cash but sometimes by other securities. The economics of a securities lending transaction are identical to a repurchase agreement when the collateral received by the state bank is cash. If the collateral is securities, the economics are slightly different because there is the risk of market price changes on both the securities loaned and the securities received as collateral. For example, the value of the security loaned could increase, and the value of the collateral received could decrease. The non-model method provides that for a repurchase agreement or a securities loan where the collateral is cash, exposure under the lending limit will be equal to and remain fixed at the net current exposure, i.e., the market value at execution of the transaction of securities transferred to the other party, less cash received from the other party. For securities lending transactions where the collateral is other securities (i.e., not cash), the adopted rule provides that the exposure will be equal to and remain fixed at the product of the higher of the two "haircuts" associated with the securities, as determined by a look-up table included in the regulation (Table 3), and the higher of the two par values of the securities. (In finance, a "haircut" is a percentage that is subtracted from the market value of an asset that is being used as collateral. The size of the haircut reflects the perceived risk associated with holding the asset.)

Reverse repurchase agreements (asset repos) and securities borrowing transactions. In a reverse repurchase agreement, also known as an asset repo, a state bank lends money to a counterparty by purchasing a security and agreeing to resell the security to the counterparty at a future date. For example, a state bank may enter into an asset repo to invest excess liquidity or to obtain securities to use as collateral in other transactions, or a state bank may need securities to cover short positions or to pledge against public funds to obtain a low-cost source of funding.

In a typical securities borrowing transaction, a state bank needing to borrow securities obtains the securities from a securities lender and posts collateral in the form of cash and/or marketable securities with the securities lender (or an agent acting on behalf of the securities lender) in an amount that fully covers the value of the securities borrowed plus an additional margin, usually ranging from two to five percent. The economics of a securities borrowing transaction are identical to a reverse repurchase agreement (asset repo) when the collateral posted by the state bank is cash.

Under the alternative, non-model method in adopted §12.12(c), the credit exposure arising from a reverse repurchase agreement or a securities borrowing transaction where the collateral is cash will equal and remain fixed at the product of the haircut associated with the collateral received, as determined in Table 3, and the amount of cash transferred to the other party. The credit exposure arising from a securities borrowed transaction where the collateral is other securities (i.e., not cash) must equal and remain fixed at the product of the higher of the two haircuts associated with the securities, as determined in Table 3, and the higher of the two par values of the securities.

Mandatory use of method. As with derivative transactions, §12.12(c)(2) provides that the commissioner may require a state bank to use a specific method to calculate the credit exposure of securities financing transactions if the commissioner finds that this method is necessary to promote the safety and soundness of the state bank.

Temporary Exception

As adopted, §12.12(d) provides that the new requirements of §12.12 do not apply to credit exposure arising from a derivative transaction or a securities financing transaction until May 1, 2013. This temporary exception will provide affected banks with time to adjust their systems and procedures to come into compliance with new requirements. Notwithstanding this exception, the department retains all necessary authority to address credit

exposures that present undue concentrations on a case-by-case basis, through existing safety and soundness requirements.

Explanatory Table

The OCC provided an explanatory table to aid in understanding its interim final rule, published with the interim final rule in the June 21, 2012 edition of the *Federal Register* (77 Fed. Reg. 37265, at 37271 - 37273). The department has prepared a similar explanatory table that lists each transaction subject to adopted §12.12 by type, a description of what happens in the transaction, the nature of the credit risk assumed in the transaction, the purpose of the transaction, and how credit exposure would be calculated under §12.12 as adopted, followed by an illustrative example for each type.

The explanatory table is intended to aid in understanding the effect of adopted §12.12 and can be viewed at www.dob.texas.gov/legal/1212_table.pdf. Upon request, a copy of the table can be obtained by email, fax or U.S. mail. The table is not a substitute for reviewing adopted §12.12 itself.

COMMENTS

The Department received one comment from Comerica Bank (Comerica) supporting adoption of the proposed amendments. Comerica concurs that these rules should mirror the federal regulations issued by the OCC, but urges the commission to adopt the proposed amendments with an effective date prior to the effective date of Section 611 of Dodd-Frank, or January 21, 2013, even if the OCC has not completed or published its revised final rule. Proposed amendments to align these rules with the OCC revised final rule can then be taken up after January 21, 2013.

7 TAC §12.2

The repeal is adopted pursuant to Finance Code, §34.201(b), which authorizes the commission to adopt rules to administer the lending limit, including rules to: (1) define or further define terms used by Finance Code, §34.201; and (2) establish limits, requirements, or exemptions other than those specified by Finance Code, §34.201 for particular classes or categories of loans or extensions of credit. In addition, Finance Code, §31.002(b), authorizes the commission to adopt additional definitions by rule to accomplish the purposes of Finance Code, Title 3, Subtitle A.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: January 3, 2013
Proposal publication date: August 31, 2012
For further information, please call: (512) 475-1300

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7 TAC §§12.2, 12.3, 12.6, 12.10, 12.12

The new and amended sections are adopted under Finance Code, §34.201(b), which authorizes the commission to adopt rules to administer the lending limit, including rules to: (1) define or further define terms used by Finance Code, §34.201; and (2) establish limits, requirements, or exemptions other than those specified by Finance Code, §34.201 for particular classes or categories of loans or extensions of credit. In addition, Finance Code, §31.002(b), authorizes the commission to adopt additional definitions by rule to accomplish the purposes of Finance Code, Title 3, Subtitle A.

§12.3. Loans and Extensions of Credit.

(a) Loans or extensions of credit for purposes of the Finance Code, §34.201, and this subchapter include:

(1) an overdraft, regardless of whether such overdraft was pre-arranged, other than an intra-day overdraft for which payment or deposit is received by the bank before the time at which the bank closes its accounting records for the business day on which the funds were advanced;

(2) a contractual obligation to advance funds to or on behalf of a person, including a bank's obligation to:

(A) make payment, directly or indirectly, to a third party contingent upon default by a customer of the bank in performing an obligation owed to the third party or upon another stated condition;

(B) guarantee or act as surety for the benefit of a person;

(C) advance funds under a legally binding commitment to lend; or

(D) advance funds under a standby letter of credit, a put, or other similar arrangement, however named or described, that represents an obligation to the beneficiary on the part of the issuing bank to repay money borrowed by or advanced to or for the account of the account party (the customer or applicant in a letter of credit transaction), make payment on account of any indebtedness undertaken by the account party, or make payment on account of a default by the account party in the performance of an obligation, but not including a bank's obligation under a commercial letter of credit or similar instrument if the issuing bank reasonably expects the beneficiary to draw on the issuer and the instrument neither guarantees payment nor provides for payment in the event of a default by a third party;

(3) a maker or endorser's obligation arising from the discount of commercial paper;

(4) third-party paper purchased to the extent it is subject to an agreement that the seller will repurchase the paper, including an obligation to repurchase the paper upon default or at the end of a stated period, less any applicable dealer reserves held by the bank as collateral security, unless such transaction is exempt under other provisions of the Finance Code or this subchapter;

(5) the sale of Federal funds with a maturity of more than one business day, but not Federal funds sold with a maturity of one day or less or Federal funds sold under a continuing contract, including contracts that provide for weekly settlement if the parties have the contractual right to obtain their funds at maturity of each transaction;

(6) loans or extensions of credit that have been charged off on the books of the bank, in whole or part, unless the loan or extension of credit is no longer legally enforceable by reason of:

(A) discharge in bankruptcy;

(B) expiration of the statute of limitations or judicial decision; or

(C) another reason, provided the bank maintains sufficient records to demonstrate that the loan is unenforceable;

(7) lease financing transactions made pursuant to the Finance Code, §34.204, unless otherwise exempt under §12.7 of this title (relating to Lease Financing);

(8) nonrecourse or limited recourse loans or extensions of credit;

(9) aggregate cash surrender value of life insurance policies from any one insurance company;

(10) any credit exposure to a person arising from a derivative transaction or a securities financing transaction between a state bank and the person, as determined pursuant to §12.12 of this title (relating to Credit Exposure Arising from Derivative and Securities Financing Transactions); and

(11) another category of transactions that is the equivalent of a loan or extension of credit as determined by the banking commissioner in the exercise of discretion.

(b) Loans or extensions of credit for purposes of the Finance Code, §34.201, and this subchapter do not include:

(1) funds advanced to or for the benefit of a borrower by a bank for taxes or insurance associated with collateral security for a loan or extension of credit, as well as funds advanced for utilities, security, and maintenance expenses associated with real property securing a loan or extension of credit, but only if necessary to preserve the value of the real property or other collateral security and consistent with safe and sound banking practices, provided the bank maintains sufficient records to demonstrate the necessity of the advance, and such advances are included in loans and extensions of credit thereafter until repaid for the purpose of determining whether additional loans or extensions of credit to the same borrower may be made within applicable lending limits;

(2) accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;

(3) that portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided the participation results in a pro rata sharing of credit risk proportionate to respective interests of the originating and participating lenders, except that:

(A) notwithstanding any requirement of Statement of Financial Accounting Standards No. 166 (Financial Accounting Standards Bd. 2009), for lending limit purposes, if the participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be considered to exist only if, in the event of default or comparable event provided in the agreement, the participants share in all subsequent repayments and collections in proportion to their actual percentage participation at the time of the occurrence of the event;

(B) if the originating bank funds the entire loan, the participants must be contractually obligated to remit their portion to the bank before the close of business (the time at which the bank closes its accounting records for the business day) on the next business day of the originating bank or its portion funded by the originating bank will be considered a loan by the originating bank to the borrower;

(C) in the case of a participation sold in an existing loan, the amount of the participation may not be subtracted from the outstanding loans and extensions of credit of the originating bank until the proceeds of sale are in the possession of the originating bank; and

(D) a loan participation agreement that provides for weekly settlement of amounts due to and from the participants meets the requirements of this paragraph if the outstanding balance to the borrower from the originating bank does not at any time exceed the bank's legal lending limit;

(4) an advance against uncollected funds in the normal course of collection pursuant to the bank's availability schedule issued in compliance with Regulation CC (12 C.F.R. §229.1 et seq.), including the amount of an item that must be credited to the customer under the bank's availability schedule but remains uncollected and unreturned because of a delay or defect in the collection system;

(5) the sale of Federal funds with a maturity of one day or less, or Federal funds sold under a continuing contract, including contracts that provide for weekly settlement if the parties have the contractual right to obtain their funds at maturity of each transaction;

(6) intra-day credit exposures arising from a derivative transaction or a securities financing transaction; or

(7) a renewal or restructuring of a nonconforming loan as a new loan or extension of credit, subject to compliance with §12.10(b) of this title (relating to Nonconforming Loans).

§12.12. Credit Exposure Arising from Derivative and Securities Financing Transactions.

(a) Scope. This section sets forth the rules for calculating the credit exposure arising from a derivative transaction or a securities financing transaction entered into by a state bank for purposes of determining the bank's lending limit pursuant to Finance Code, §34.201, and this subchapter.

(b) Derivative transactions.

(1) Non-credit derivatives. Subject to paragraphs (2) and (3) of this subsection, a state bank shall calculate the credit exposure to a counterparty arising from a derivative transaction by one of the following methods. Subject to paragraph (3) of this subsection, a bank shall use the same method for calculating counterparty credit exposure arising from all of its derivative transactions.

(A) Internal model method.

(i) Credit exposure. The credit exposure of a derivative transaction under the internal model method shall equal the sum of the current credit exposure of the derivative transaction and the potential future credit exposure of the derivative transaction.

(ii) Calculation of current credit exposure. A bank shall determine its current credit exposure by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark-to-market value is zero or negative, then the current credit exposure is zero.

(iii) Calculation of potential future credit exposure. A bank shall calculate its potential future credit exposure by using an internal model that has been approved for purposes of §53 of the federal capital adequacy guidelines, or another approved model.

(iv) Net credit exposure. A bank that calculates its credit exposure by using the internal model method pursuant to this subparagraph may net credit exposures of derivative transactions arising under the same qualifying master netting agreement.

(B) Conversion factor matrix method. The credit exposure arising from a derivative transaction under the conversion factor matrix method shall equal and remain fixed at the potential future credit exposure of the derivative transaction as determined at the execution of the transaction by reference to the following Table 1.

Figure: 7 TAC §12.12(b)(1)(B)

(C) Remaining maturity method. The credit exposure arising from a derivative transaction under the remaining maturity method shall equal the greater of zero or the sum of the current mark-to-market value of the derivative transaction added to the product of the notional amount of the transaction, the remaining maturity in years of the transaction, and a fixed multiplicative factor determined by reference to the following Table 2.
Figure: 7 TAC §12.12(b)(1)(C)

(2) Credit derivatives.

(A) Notwithstanding paragraph (1) of this subsection, a state bank that uses the conversion factor matrix method or remaining maturity method, or that uses the internal model method without entering an effective margining arrangement as defined in §12.2 of this title (relating to Definitions), shall calculate the counterparty credit exposure arising from credit derivatives entered by the bank by adding the net notional value of all protection purchased from the counterparty on each reference entity.

(B) A state bank shall calculate the credit exposure to a reference entity arising from credit derivatives entered by the bank by adding the notional value of all protection sold on the reference entity. However, the bank may reduce its exposure to a reference entity by the amount of any eligible credit derivative purchased on that reference entity from an eligible protection provider.

(3) Mandatory use of method. The commissioner may require a state bank to use the internal model method set forth in paragraph (1)(A) of this subsection, the conversion factor matrix method set forth in paragraph (1)(B) of this subsection, or the remaining maturity method set forth in paragraph (1)(C) of this subsection to calculate the credit exposure of derivative transactions if the commissioner finds that such method is necessary to promote the safety and soundness of the bank.

(c) Securities financing transactions.

(1) In general. Except as provided by paragraph (2) of this subsection, a state bank shall calculate the credit exposure arising from a securities financing transaction by one of the following methods. A state bank shall use the same method for calculating credit exposure arising from all of its securities financing transactions.

(A) Internal model method. A state bank may calculate the credit exposure of a securities financing transaction by using an internal model approved for purposes of §32(d) of the federal capital adequacy guidelines, or another approved model.

(B) Non-model method. A state bank may calculate the credit exposure of a securities financing transaction as follows:

(i) Repurchase agreement. The credit exposure arising from a repurchase agreement shall equal and remain fixed at the market value at execution of the transaction of the securities transferred to the other party less cash received.

(ii) Securities lending.

(I) Cash collateral transactions. The credit exposure arising from a securities lending transaction where the collateral is cash shall equal and remain fixed at the market value at execution of the transaction of securities transferred less cash received.

(II) Non-cash collateral transactions. The credit exposure arising from a securities lending transaction where the collateral is other securities shall equal and remain fixed as the product of the higher of the two haircuts associated with the two securities, as determined in the following Table 3, and the higher of the two par values of the securities.

(iii) Reverse repurchase agreements. The credit exposure arising from a reverse repurchase agreement shall equal and remain fixed as the product of the haircut associated with the collateral received, as determined in the following Table 3, and the amount of cash transferred.

(iv) Securities borrowing.

(I) Cash collateral transactions. The credit exposure arising from a securities borrowed transaction where the collateral is cash shall equal and remain fixed as the product of the haircut on the collateral received, as determined in the following Table 3, and the amount of cash transferred to the other party.

(II) Non-cash collateral transactions. The credit exposure arising from a securities borrowed transaction where the collateral is other securities shall equal and remain fixed as the product of the higher of the two haircuts associated with the two securities, as determined in the following Table 3, and the higher of the two par values of the securities.
Figure: 7 TAC §12.12(c)(1)(B)(iv)(II)

(2) Mandatory use of method. The commissioner may require a state bank to use either the internal model method set forth in paragraph (1)(A) of this subsection or the non-model method set forth in paragraph (1)(B) of this subsection to calculate the credit exposure of securities financing transactions if the commissioner finds that such method is necessary to promote the safety and soundness of the bank.

(d) Temporary exception. The requirements of this section do not apply to credit exposure arising from a derivative transaction or a securities financing transaction until May 1, 2013.

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 December 14, 2012.

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A. Kaylene Ray
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1300

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 82. ADMINISTRATION

7 TAC §82.4

The Finance Commission of Texas (commission) adopts new 7 TAC §82.4, concerning Consumer Complaint Process. The commission adopts new §82.4 without changes to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8665). The rule will not be republished.

In general, the purpose of the new rule is to clarify the applicability of Texas Finance Code, §14.062, Consumer Information

and Complaints. This procedural rule clarifies how the agency implements the referenced statutory provision during the complaint process. New §82.4 places into regulation the agency's existing policy by identifying which parties receive the policies and procedures relating to complaint investigation and resolution after the agency has received a consumer complaint. This rule is a result of an audit finding.

Subsection (a) of §82.4 provides the general purpose of the rule as stated in the first sentence of the preceding paragraph. Subsection (b) outlines the definitions used in the rule, with paragraph (1) adopting the general words and terms as defined in §82.2 of the same title.

Section 82.4(b)(2) defines the phrase "person filing the complaint" under Texas Finance Code, §14.062(b) and (c), to mean "an individual who has sought or is seeking to obtain goods, services, or financing from a commercial entity." These statutory provisions relate to when the OCCC is to provide a copy of the agency's policies and procedures regarding complaint investigation and resolution (statutory subsection (b)) and notification of the status of the complaint investigation (statutory subsection (c)). At times, the agency receives complaints from a department, agency, or instrumentality of Texas or another state or from a federal governmental body. The agency believes that it would not be an efficient use of government resources to provide the statutory notices under §14.062(b) and (c) to such entities. Thus, the adopted rule clarifies that individual consumers who have either done business with or are seeking to enter into a business relationship with a commercial entity are the intended "person(s) filing the complaint" to receive these notices.

Subsection (c) of §82.4 provides further clarification relating to which parties receive the OCCC's complaint policies and procedures. When the OCCC receives complaints from other state and federal governmental bodies, sometimes a compliance issue is raised without a connection to an individual consumer. In those situations, the OCCC may add a notation of the issue to the next scheduled examination, set an earlier examination, or open an investigation of the issue. In order to properly address these broad or systemic types of complaints, the OCCC does not notify the licensee in advance of the investigation or examination (except as required by law for motor vehicle sales finance examinations).

Therefore, the purpose of §82.4(c) is to delineate that notice of OCCC complaint policies and procedures is not required to be delivered to the subject of the complaint when a complaint is received from a source other than a "person filing the complaint" as defined by the rule.

The commission received no written comments on the proposal.

The new rule is adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 14 and Title 4.

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-201206478

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: January 3, 2013
Proposal publication date: November 2, 2012
For further information, please call: (512) 936-7659

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CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

DIVISION 5. OPERATIONAL REQUIREMENTS

7 TAC §83.5001

The Finance Commission of Texas (commission) adopts amendments to §83.5001, concerning Data Reporting Requirements for credit access businesses. The commission adopts the amendments to §83.5001 without changes to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8666). The rule will not be republished.

In general, the purpose of the amendments to §83.5001 is to provide provisions relating to annual reports and the confidentiality of all data reports submitted by credit access businesses (CABs). The agency believes that these clarifying amendments will provide guidance to the industry and place into rule form existing agency practices.

The adopted amendments to §83.5001(a) and (b) allow for the collection of certain CAB data on an annual basis and add a deadline for when that data is due. In particular, three new sentences conclude subsection (a) by adding a statutory citation and stating that the quarterly data submitted on an annual basis will be referred to as the "annual report" for purposes of the section. Additionally, a new paragraph (2) relating to annual reports is being added in subsection (b) concerning due dates, and the former language regarding the quarterly due dates has been relettered and renumbered, along with other technical corrections.

The agency believes that the collection of certain data annually as opposed to quarterly is more efficient for both the industry and the agency as well. The one-time submission lessens the industry's burden and provides these data points when they are more useful for agency analysis. The agency previously worked with a group of CAB stakeholders to compile the data sets collected during each particular timeframe, and the amendments do not change the data sets determined by stakeholder collaboration. In addition, in order to properly encompass data collected on a quarterly and on an annual basis, the title of the rule has been changed to "Data Reporting Requirements."

The adopted amendments to §83.5001 also add new subsections (c) and (d). Subsection (c) outlines the confidentiality of all individual data reports submitted under Texas Finance Code, §393.622(b), while subsection (d) delineates the publication of aggregated data on the agency's website.

The commission received no written comments on the proposal.

The amendments are adopted under Texas Finance Code, §393.622, which authorizes the Finance Commission to adopt

rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

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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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7659

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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 D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §25.96

The Public Utility Commission of Texas (commission) adopts new §25.96, relating to Vegetation Management, with changes to the proposed text as published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5534). This reporting rule will provide the commission with information necessary to assess the distribution system vegetation management activities of electric utilities in determining their effectiveness in enhancing reliability and protecting public safety. The reports will address both plans for the coming year and progress in implementing plans for the preceding year. This new section is adopted under Project Number 38257.

The commission received written initial and/or reply comments on the new section from AEP Texas Central Company, AEP Texas North Company, and Southwestern Electric Power Company (collectively, AEP); CenterPoint Energy Houston Electric (CenterPoint); Entergy Texas, Inc. (Entergy); Oncor Electric Delivery Company LLC (Oncor); Sharyland Utilities, LP (Sharyland); Southwestern Public Service Company (SPS); Texas-New Mexico Power Company (TNMP); Brazos Electric Power Cooperative, Inc, (Brazos); East Texas Cooperatives (ETC); Texas Electric Cooperatives, Inc. (TEC); City of Houston (Houston); and the Steering Committee of Cities Served by Oncor (Cities). Additionally, State Senator Robert L. Nichols filed a letter commenting on the proposed rule.

A public hearing was tentatively scheduled for September 18, 2012 in the event a hearing was requested. ETC requested a hearing but withdrew the request on September 14, 2012. Since no other parties requested a hearing, it was canceled.

General Comments

CenterPoint commented that a new rule is unnecessary because the three reports that have been filed under §25.94 and §25.95 are sufficient to cover the subject, and the commission has not pointed to any deficiencies in the existing reports. TNMP, Oncor, AEP, and Entergy agreed.

CenterPoint noted that the rule does not provide needed flexibility or require cost-effective strategies. CenterPoint commented that the requirements are overly prescriptive, burdensome, and costly and will produce no significant benefits. Finally, CenterPoint remarked that the rule could not be finalized by November 2012 and therefore should not be implemented until November 2013. AEP agreed with this point.

Oncor commented that it appreciated the opportunity to comment on the two strawman rules and believes that the proposed rule addressed most of its initial concerns, but it stressed that the company understands this rule to be a reporting rule only that does not require utilities to take any new, specific vegetation management actions. AEP agreed.

AEP commented that it adheres to the industry standards referenced in the rule. AEP noted that it supports reporting to the commission on activities pertinent to electric utility distribution vegetation management and that if a new rule is adopted, it should be reasonably tailored and provide flexibility in what is reported to reflect a utility's manner and approach for its service area.

SPS commented that it does not oppose increased specificity in the Plan or more detailed information as required in the Report. For the most part, it is reasonably balanced. SPS appreciated staff's diligence in its evaluation and willingness to consider parties' strawman comments.

TNMP commented that the rule would add operational and administrative cost burdens by imposing significant, detailed reporting and tracking obligations, increasing costs without a commensurate improvement in system reliability. ETC also commented that this rule will increase costs.

Houston commented that it generally supports the proposed new rule and does not anticipate any costs to result from it. Houston remarked that the City hopes that the additional data provided by utilities will shed light on vegetation management best practices. Houston said that it intends to participate in any future rulemakings relating to establishing a set of vegetation management standards, including those recommended by previous reports commissioned by Houston and the commission.

Commission Response

The commission believes that the new rule adequately addresses the utilities' need for flexibility in their administration of vegetation management practices and does not impose excessive costs. The new rule does, however, impose additional reporting requirements on the utilities but does not mandate that a utility undertake new vegetation management practices. The commission believes that the insight gained from receiving this increased level of information regarding the various vegetation management practices and the resulting potential for increased reliability outweigh the costs associated with the increased reporting requirements.

In response to CenterPoint's comments, the commission reiterates that the first filing due May 1, 2013 must cover subsection (f)(1) and not (f)(2). Utilities do not, therefore, need to report their implementation summaries for their 2012 activities but will report their implementation summaries for their 2013 activities in their 2014 Report.

Cities expressed concern that utilities may interpret the rule to allow utilities to recover projected vegetation management related expenses stated in their vegetation management reports even if those expenses have not actually been incurred and suggested language to cure the defect. TNMP did not support Cities' position since commission rules define recoverable costs and adjustments, and TNMP suggested language to that effect. CenterPoint urged the commission to reject Cities' proposed language as proposed modifications to test year expenses should occur in a base rate case, not this rulemaking. It argued that the language could discourage utilities from making improvements in their vegetation management programs. Sharyland opposed Cities' proposed language because it is unnecessary and inconsistent with established rate-making principles.

Commission Response

The new rule does not address rate recovery. Therefore, the Cities' proposed language is unnecessary.

ETC commented that the proposed rule appropriately accounts for the exclusive jurisdiction of cooperative boards of directors over operations, but ETC was concerned about the cost and administrative burden of implementation, the goal, the benefit to members who will bear the costs, and the unintended consequences of the rule. ETC did not welcome the thought of submitting an annual report that could lead cooperatives "straight to the courthouse in the event of an incident outside of their control." ETC believed "it is obvious that more vegetation management will definitely achieve" enhanced reliability and secure the public safety, "but it will not control the weather or keep a vehicle from taking out a distribution pole." ETC commented that the rule is a step backwards for the state's favorable business climate and tort reforms as wildfires have "spawned a cottage industry in the legal community in search of more and deeper pockets as nature takes its ever-changing course."

Commission Response

The commission acknowledges that events outside of a cooperative's control do occur. Wildfires caused by electrical infrastructure, however, pose a serious danger to people and property, and the state has a keen interest in whether those who maintain such infrastructure perform their due diligence in protecting the state from the threat.

The commission has concluded that it is not necessary to require vegetation management reports from electric cooperatives at this time. As a result, it has deleted proposed subsection (g). If in the future it appears that electric cooperatives' vegetation management practices are inadequate and may pose a threat to the public safety and the electric cooperatives' ability to provide continuous and adequate service, the commission will revisit whether to require vegetation management reports from electric cooperatives.

Comments on Specific Sections of the Proposed Rule

Section 25.96(b)(1): Definitions

Oncor commented that the definition of "distribution assets" should be focused solely on overhead distribution feeders and suggested changing the language to reflect the fact that substations rarely have vegetation-related issues, underground facilities are not impacted by overhead vegetation growth, and utilities may not perform vegetation management on service drops. Oncor noted that the proposed rule makes that distinction under subsection (f)(1)(F) and (2)(G)(iii).

Commission Response

Oncor's proposal is reasonable, and the commission has therefore modified the language accordingly.

Section 25.96(b)(2): Definitions

CenterPoint commented that the company defines an outage event as one that affects service for more than one minute, and the definition of "outage" in the proposed rule as an event affecting service for more than five minutes would require modifications to its calculations. It argued that this definition is overly prescriptive, and it would take time to implement the change. CenterPoint suggested that the definition be removed because it is inconsistent with how that term is used in other rules and because the term is used only once and does not require definition. Entergy agreed.

SPS commented that it appreciated staff adding this definition as the company requested in its comments on the revised strawman, but it believes that adding "on a primary conductor" will provide further clarity because outages caused by vegetation that are impactful on reliability for multiple customers would occur on a primary conductor.

Commission Response

The commission concludes that changing the term "outages" to "interruptions" in subsection (f)(2)(F) relieves the need for a definition, and the commission thus deletes this definition.

Section 25.96(b)(3): Definitions

AEP commented that the term "reactive" should be changed to "unscheduled" for consistency with subsection (b)(5). AEP recommended replacing the word "unscheduled" with "responsive" because AEP responds to either customer or company requested maintenance.

Commission Response

AEP's proposed change is reasonable, and the commission has therefore modified the language accordingly.

Section 25.96(b)(4): Definitions

Oncor commented that the term "right to access" should be modified because it is the actual legal right to trim vegetation on that land that allows a utility to conduct work there. Oncor suggested that the legal rights should be stated and suggested deleting everything after "the right to access" and adding "existing ownership, easement, license or franchise rights entitling it to manage vegetation on that land." Entergy agreed.

AEP noted that the acronym "ROW" should be used in the definition of "right-of-way" since the acronym is used in other sections of the rule.

Commission Response

The commission declines to adopt Oncor's proposed changes because the proposed definition appropriately refers to the "the right to access for the purpose of maintaining its distribution system and managing vegetation." The commission agrees with AEP and has therefore modified the language accordingly.

Section 25.96(b)(6): Definitions

SPS suggested that the definition of "tree risk management" should conform to the ANSI Standard A300 definition of hazard tree management, which is the generally accepted industry standard.

TNMP requested that the definition be changed to make it applicable only to trees actually located on property owned or controlled by the utility to align with the utility's legal rights.

Commission Response

The commission agrees with SPS and has modified the language to conform to the ANSI Standard A300 definition of hazard tree management. The commission disagrees with TNMP because some utilities do consider off-ROW vegetation in their tree risk management programs.

Section 25.96(c): Vegetation management requirements under other provisions

CenterPoint commented that if the commission wants to address vegetation management, it should do so through modifications to the existing rules. If it does not choose to follow CenterPoint's recommendation, the commission should delete the vegetation management requirements of §25.94 and §25.95. Oncor, AEP, and TNMP agreed.

Commission Response

Vegetation management warrants its own rule because of its importance. In a future rulemaking, the commission may delete §25.94(c)(2) and §25.95(e)(2), which are no longer necessary as a result of this new vegetation management rule.

Section 25.96(d): Utility conformance to standards of the industry

CenterPoint commented that its vegetation management work will conform to the standards when it is performed, but vegetation growth will remove it from conformance prior to the next trim cycle. CenterPoint also suggested that "reasonable efforts" is too subjective. CenterPoint noted that paragraphs (1) and (2) are inconsistent in requiring reasonable efforts "where applicable" and explanations of when it "does not conform." CenterPoint stated that the rule would necessitate submission of reports for deviations that will be unnecessary and time consuming. CenterPoint commented that the reference to ANSI Part 7 should be deleted because it would add staffing requirements, intensive oversight, and several years to implement. Instead, Part 7 should be required only when economical and reasonable.

Oncor commented that it saw this section as requiring only a brief explanation when it does not fully comply with all of the standards in subsection (d). If the commission intends the rule to require strict compliance with only a limited number of deviations, however, Oncor would join CenterPoint's objections.

Commission Response

The purpose of subsection (d) is to provide the commission with notice when a utility's policy regarding a specific vegetation management practice deviates from industry standards. The utility must provide the commission with information explaining why there is a deviation. The commission has modified subsection (d) to clarify its intent.

CenterPoint remarked that the reference to ANSI Part 9 should be deleted because it applies to professional commercial tree care companies assessing for private land owners and is therefore more technically detailed than the company's practices and would not be cost effective. Entergy and AEP agreed with this point.

TNMP commented that Part 9 requires a utility to report and carry out mitigation measures whether a tree is actually subject to the utility's control or right to access the property. This would require a utility to either vastly over pay for a narrow easement to mitigate the tree or pursue condemnation. Subsection (d)(2) allows for an explanation if the utility does not conform to the provision, but the utility would still be exposed to regulatory penalty because the rule does not state whether any explanation is sufficient for relief. The provision must state that a utility need not acquire additional land or property rights in order to comply, and if an adjoining owner denies a utility's request to inspect or mitigate, the rule should provide that the utility has discharged its duty regarding hazard trees located outside its legal authority. Entergy and AEP agreed.

Commission Response

The commission disagrees with CenterPoint and TNMP. The standard is designed for the user (the utility) to write a "specification" for tree risk management that its arborists will follow. TNMP's concerns regarding trees that lie outside of its ROW are satisfied if TNMP were to maintain a Level 1 risk assessment plan under ANSI Part 9. A Level 1 risk assessment simply requires the identification of trees that have "obvious defects." Footnote 5 of TNMP's comments stated that the utility currently maintains a procedure for seeking landowner consent for mitigating trees "that clearly threaten a line." The standard contains no requirement for mitigation of these out-of-ROW trees by the utility. Part 9 addresses certain recommendations that a utility can make regarding the tree risk assessment data; there is no requirement that a utility undertake any action regarding that data. In fact, Section 93.6.4.1 provides that the responsibility for action, follow-up, and/or mitigation rests with the owner of the tree. The utility's responsibility may be in reporting and making recommendations to that owner, a procedure that TNMP claims to have in place already.

Section 25.96(e)(1): Vegetation Management Plan

CenterPoint commented that this is already required under §25.95 so requiring it here is repetitive and unnecessary unless the existing rules are amended to delete the requirement.

Commission Response

The commission disagrees as described under subsection (c). Since utilities no longer need to report under the vegetation management §25.95(e)(2), doing so under this rule is not repetitive.

Section 25.96(e)(2): Vegetation Management Plan

CenterPoint commented that the meaning of the terms "vegetation mitigation methods" and "applicable" distribution assets are unclear.

Commission Response

The commission has modified the language for clarity by describing its meaning more plainly.

Section 25.96(e)(3): Vegetation Management Plan

TNMP commented that it does not have a separate tree risk management program that would be required by ANSI A300 Part 9, and implementing one would be expensive with a small improvement to reliability. Mitigating hazard trees outside TNMP's authority would increase the vegetation management budget by

$500,000 per year plus the cost of acquiring legal access. Hiring foresters and staff would cost a minimum of $150,000 annually. Merely tracking the information will require additional cyclical inspections and costs. If the commission does not delete the provision, TNMP suggests that (1) the cost and risk impact be reduced by restricting the applicability to only trees located on a utility's easements/property and (2) the rule provide that a utility be exempt from complying for 12 months following adoption of the rule to allow time to implement them. Entergy agreed that significant cost increases would result.

Commission Response

The commission disagrees as stated in its responses under subsection (d) above. Since the commission is not requiring utilities to change their tree risk management programs but only to describe them and inform the commission if a utility does not follow industry standards, any increase to the cost of their programs will not be commission-prescribed.

Section 25.96(e)(4): Vegetation Management Plan

CenterPoint commented that this provision is unnecessary and inappropriate micro-management of a business decision. If the utility's system is unreliable, the commission should address it through the regulatory process, not by mandating continuing education that is unlikely to correlate to reliability. TNMP agreed.

Oncor interpreted this provision as nothing more than a report of what continuing education participation occurred for the utility's internal employees; no specific level of continuing education was required. Oncor thus did not oppose this provision. SPS commented that its understanding is that the only continuing education plan required is for direct employees of the utility and suggested that the word "internal" be inserted to clarify this intent.

Commission Response

The commission disagrees with CenterPoint and TNMP. The rule allows a utility to determine what level of continuing education is appropriate. The rule merely requires that utilities report continuing education hours.

The commission agrees with SPS that adding the word "internal" will clarify its intent and has modified the language accordingly.

Section 25.96(e)(5): Vegetation Management Plan

SPS commented that this provision should read "number of miles of circuit" to be trimmed because it would be more descriptive of the amount of work being performed than the number of circuits alone.

Commission Response

The commission agrees that this language is more accurate and has modified the language accordingly.

Section 25.96(e)(6): Vegetation Management Plan

CenterPoint commented that this provision would require the company to change from a cycle-based program to a reliability-based program, and the commission should not dictate which is best for the company. CenterPoint expressed concern that the requirement would increase costs because it would need to add a plan for the 10% of feeders related specifically to vegetation outages. The 10% worst feeders for vegetation-caused issues may not be the worst-performing feeders generally, so the rule could shift resources away from those that need the most urgent attention.

Commission Response

The commission disagrees. This provision requires only that a utility describe its plan to remediate its vegetation-caused, worst performing feeders. If a utility does not have a plan to remediate these feeders, the utility need only say as much to be in full compliance with this provision.

Oncor commented that it understands that the SAIDI and SAIFI scores in this provision refer to the utility's non-storm scores, consistent with the way the scores are reported. Oncor also suggested that the measure be changed from "worst ten percent performing feeder" to reflect a similar change in PURA §38.005 to a "greater than 300% of system average" standard. TNMP agreed with Oncor. AEP concurred that a change in language would be appropriate given the statutory framework and suggested instead that the entire clause be replaced with "plan to address issues on feeders which are on the worst vegetation caused performing feeder list for the previous calendar year." Entergy agreed.

Commission Response

The commission agrees with AEP, Oncor, and TNMP and has modified the language to align with the Service Quality Report utilities are required to file pursuant to §25.52, relating to Reliability and Continuity of Service, and §25.81, relating to Service Quality Reports.

Section 25.96(e)(7): Vegetation Management Plan

CenterPoint commented that this is already reported under §25.95 so requiring it here is repetitive and unnecessary unless the existing rules are amended to delete the requirement.

Commission Response

The commission disagrees as described previously with respect to subsection (c). Since utilities no longer need to report under the vegetation management subsection of §25.95, doing so here is not repetitive.

Section 25.96(f): Vegetation Management Report

CenterPoint noted that the list of subparagraphs under subsection (f)(1) is more expansive than the list in subsection (e), and they should be consistent. CenterPoint recommended that the language proposed for the summary be deleted and inserted under subsection (e), and the introduction to subsection (f) should be amended to require the summary to include the issues under subsection (e).

Commission Response

The commission disagrees. The lists are different because subsections (e) and (f) have different goals. Subsection (e) specifies information that the commission believes should be included in a utility's vegetation management plan. The commission does not necessarily need to see that information annually but expects it to be up to date should the commission ask to see the utility's full plan. Subsection (f)(1) specifies information the commission would like to see annually.

Oncor requested that the deadline be moved from February 1 to May 1 of each year because it does not finalize its books until after February 1 and would not have all of the data compiled for the prior year's Report. TNMP agreed because its prior year budget is not available for non-confidential release until mid-February, and May 1 would coincide with the current date for §25.94 and §25.95. Entergy agreed.

AEP requested that the deadline be changed and suggested March 15 to permit inclusion of SAIDI and SAIFI data compiled for the Service Quality Report which is due on February 15. In reply comments, AEP changed its position to concur with Oncor and Entergy that May 1 would be preferable.

SPS proposed that the initial Plan be recognized as the Report filing made on February 1, 2013 for the purposes of review in the subsequent year's Report.

Commission Response

A deadline of May 1 is reasonable, and the commission has therefore modified the language accordingly. In response to SPS's comments, the commission notes that the rule provides that the first filing due May 1, 2013 must cover subsection (f)(1) and not (f)(2). Utilities do not, therefore, need to report their implementation summaries for their 2012 activities but will report their implementation summaries for their 2013 activities in their 2014 Report.

Section 25.96(f)(1): Vegetation Management Report

CenterPoint commented that the requirements of subparagraphs (B) and (C) are the same as the requirements of subsection (e)(1) and (6), and they should thus be deleted.

Commission Response

The commission disagrees as described previously with respect to subsection (f). The procedure for and goals of subsections (e) and (f) are different, which is why there are distinct requirements in each of these subsections.

Section 25.96(f)(1)(C): Vegetation Management Report

AEP suggested the same language alteration for this subsection as it did for subsection (e)(6).

Commission Response

The commission agrees and has modified the language to align with the Service Quality Report.

Section 25.96(f)(1)(D): Vegetation Management Report

TNMP reasserts the same comments it made regarding subsection (e)(3).

Commission Response

The commission disagrees as stated previously with respect to subsection (e)(3). Since the commission is not requiring utilities to change their tree risk management programs, any increase to the cost of their programs will not be commission-prescribed.

Section 25.96(f)(1)(E): Vegetation Management Report

CenterPoint noted that subparagraph (E) should be limited in scope to specify vegetation management issues, and it suggested that different utilities will have different determinations of an event that qualifies as an adverse environmental condition, including the meaning of a drought and wildfire. CenterPoint expressed concern that the language is too broad and could lead to accusations of non-compliance if the company is forced by conditions outside of its control to change its practices in the middle of a plan year as it did in response to the drought of 2011.

Commission Response

The commission agrees to limit the scope and has modified the language by tying it directly to conditions that may impact a utility's vegetation management policies. Subsection (f)(1) is forward-looking, and the commission understands that plans can and will change to accommodate unforeseen events such as the 2011 drought.

Section 25.96(f)(1)(F): Vegetation Management Report

Oncor questioned whether this provision is necessary.

Commission Response

Subsection (f)(1)(F) requires that a utility provide its total overhead distribution miles in its system, excluding service drops. This information provides one measure of the portion of the system for which the utility must perform vegetation management. The commission would also like to see this information as a basis of comparison from year to year.

Section 25.96(f)(1)(G): Vegetation Management Report

CenterPoint commented that this subsection should be limited to the total number of distribution customers served by the utility because many of its customers are served at transmission level. TNMP suggested that the word "distribution" be added. Since Oncor's customers are retail providers and not end users, Oncor suggested that "total number of customers served" be replaced with "total electric points of delivery," consistent with the language in the Earnings Monitoring Report pursuant to §25.73(b). Oncor questioned the usefulness of this information.

Commission Response

Oncor's suggestion is helpful, and the commission has therefore modified the language accordingly. This information provides one measure of the size of the utility's system. The commission would like to see this information as a basis of comparison from year to year.

Section 25.96(f)(1)(H): Vegetation Management Report

CenterPoint commented that the term "amount of vegetation-related work" is too broad and needs clarification on whether it should be answered in dollar amounts, circuit miles worked, or number of circuits worked.

Commission Response

The commission disagrees. This subsection refers to subparagraph (A) of the same paragraph, which requests the method the utility employs to measure its progress and leaves it to the discretion of the utility to determine how to measure that progress. The commission is not requiring that a utility change its practices by imposing a uniform method. However, a utility should report information using the same method from year to year, or explain any changes in the reporting method.

SPS commented that the use of the term "next year" was incorrect and suggested that it be replaced with "in the current calendar year."

Commission Response

The commission agrees with SPS that the change reflects its intent and has modified the language accordingly.

Section 25.96(f)(1)(I): Vegetation Management Report

AEP commented that flexibility is key to maintaining a reasonable, cost-effective approach and that the commission should avoid overly-prescriptive and arbitrary budget buckets. It should be sufficient to demonstrate that a budget as determined in the last base rate case is effectively and sufficiently applied to the best of the utility's ability and limited only by what the overall utility budget allows. AEP also suggested that the word "reactive" be changed to "unscheduled" as described above.

TNMP commented that although the company's budget categories do not align with those mandated in the provision, it appreciated the commission's recognition of the need for flexibility in permitting TNMP to tailor the budget categories to fit TNMP's practices with a simple explanation. However, TNMP does not budget separately for tree risk management, so if the commission is requiring it to do so, it will be costly to adjust.

Oncor commented that its budget categories do not align with the commission's but that providing the information in this format would not require it to change its practices. Oncor did not view the proposed rule as requiring the company to actually budget a certain amount for any expense category if the company's practices would simply create a $0 amount.

Commission Response

The commission agrees that AEP's suggestion of changing "reactive" to "unscheduled" is reasonable and has modified the language accordingly. The commission otherwise disagrees with AEP and TNMP. This provision does not require any change in vegetation management practice. It simply requires a utility to arrange its existing budget categories and subcategories under four commission-prescribed categories for these reports. If one or more of these categories do not have a budgeted amount, an explanation would be sufficient for the utility to be in full compliance with this subsection, as Oncor suggested.

Section 25.96(f)(2)(C): Vegetation Management Report

CenterPoint commented that this requirement is similar to those in subsection (e)(6) and subsection (f)(1)(C), and it should be deleted for the reasons stated in its comments under subsection (e)(6) above. Oncor and TNMP reiterated their comments stated under subsection (e)(6).

Commission Response

The commission disagrees with CenterPoint for the reasons outlined previously with respect to subsection (e)(6) but has modified the language to align it with changes made to subsection (e)(6).

Section 25.96(f)(2)(D): Vegetation Management Report

CenterPoint commented that this requirement is similar to subsection (e)(4), and it should be deleted for the reasons stated in its comments under subsection (e)(4) above.

SPS commented that its understanding is that the only continuing education report required is for direct employees of the utility and suggested use of the word "internal" to clarify.

Commission Response

The commission agrees with SPS and has modified the language for specificity. The commission disagrees with CenterPoint for the reasons explained previously with respect to subsection (e)(4) and declines to delete the provision. The commission is not mandating curricula, requiring personnel to log a certain number of hours, or otherwise prescribing training requirements.

Section 25.96(f)(2)(E): Vegetation Management Report

CenterPoint commented that this requirement is similar to subsection (f)(1)(H), and it should be clarified for the reasons stated in its comments above.

Commission Response

The commission disagrees as discussed previously with respect to subsection (f)(1)(H). This subsection refers to subparagraph (A) of the same paragraph, which requests the method the utility employs to measure its progress and leaves it to the discretion of the utility to determine how to measure that progress.

Section 25.96(f)(2)(F): Vegetation Management Report

CenterPoint commented that SAIDI and SAIFI scores are calculated on an annual basis because the indices should be cumulative calculations to supply useful data, and averaging the numbers does not provide measurable metrics. The indices are highly impacted by weather and seasons so the annual report is the best indicator of the manner in which a utility is responding to system outages.

AEP requested clarification on whether this is to be applied by feeder or by company level, and the company proposes that the information be presented on a company level, aggregated monthly and annually. AEP also noted that reactive or responsive unscheduled maintenance budget dollars will prove to be a variance every year because they will be estimates.

Commission Response

The commission has modified the language to align this provision with current reporting requirements under §25.52 and §25.81.

Section 25.96(f)(2)(G)(ii): Vegetation Management Report

Entergy commented that the 2% negative budget is overly stringent and requested that the commission replace it with the 10% negative variance from staff's original Proposal for Publication.

Commission Response

The commission disagrees and declines to alter the provision. It is important to know when a utility's actual expenditures fall below budgeted amounts since that signals that less vegetation management is being accomplished than anticipated. Given the importance of vegetation management, the commission will want to know why that is occurring. The commission believes that a utility should report when its expenditures are 2% or more below budgeted amounts rather than 10% since that will result in more information being provided to the commission on this significant issue.

Section 25.96(f)(2)(G)(iii) and (iv): Vegetation Management Report

Oncor commented that clause (iii) does not explicitly state inclusion of expenditures from the storm reserve while clause (iv) does and requests that the lack of clarity this casts on "total expenditures" be resolved. Oncor suggested that the phrase "number of customers" be replaced with "points of delivery" for reasons set forth under subsection (f)(1)(G). Oncor questioned the usefulness of the data because it cannot be used to make utility-to-utility comparisons considering the diversity of service areas and vegetation across the state. Similarly, comparisons over time for a single utility will be difficult because of the varying number and severity of storms. Entergy agreed.

Commission Response

The commission agrees with Oncor's first point that subsection (f)(1)(G) should be modified to refer to points of delivery and not number of customers. The commission disagrees with Oncor's second point and declines to alter the provision. The commission would like to see this information in this context. The commission understands that this information is subject to a number of

variables, but it does provide a frame of reference for comparing a utility's program from year to year. It will be considered in concert with the rest of the information submitted under this rule.

SPS commented that a more reasonable, informative and accurate comparison would be of annual vegetation management expenditures to the total number of overhead distribution miles worked in that calendar year and that the provision should specify pole-to-pole miles of right of way to account for the difference in miles between a single and triple phase line.

Commission Response

The commission agrees with SPS that this information would provide for more useful comparisons and has modified the language accordingly.

Section 25.96(f)(2)(G)(v): Vegetation Management Report

Oncor commented that rate cases do not involve a review of budgets but of test year expenses, and the reference should be to "base rate case" as not all rate cases are base rate cases that include vegetation management expenses. Oncor suggested, therefore, that the provision be modified to read "the vegetation management expense amount approved as part of the utility's last base rate case." Even with the modification, Oncor noted that the commission rarely "approves" specific expense items such as vegetation management expenses so utilities will likely estimate what level of such expenses were included in the approved cost of service amount.

Commission Response

The commission agrees with Oncor that the reference should be to base-rate case, and has modified the language accordingly.

Entergy requested a template or form with the format the commission would prefer for the submission of this information to provide specificity.

Commission Response

The commission staff will work with utilities to develop a template.

Section 25.96(g): Vegetation Management Report for Electric Cooperatives

TEC and Brazos filed comments asserting that the proposed rule is outside the scope of the commission's jurisdiction over electric cooperatives. TEC contended that PURA §38.101, which requires the submission to the commission of reports on vegetation management applies only to electric utilities and not electric cooperatives. TEC explained that PURA §38.101 specifically refers to an "electric utility" and that "electric utility" is a defined term in PURA which expressly excludes an electric cooperative and a municipal cooperation. TEC further contended that PURA §38.101 is the only section of PURA that specifically addresses reporting on vegetation management activities and no other provision of PURA specifically mentions vegetation management reporting requirements. TEC concluded that the legislature did not intend for electric cooperatives to be included in the rules establishing vegetation management reporting requirements. TEC asserted that PURA §38.101 also requires reporting of information identifying areas that are susceptible to damage during severe weather and hardening transmission and distribution facilities in those areas. TEC surmised that based on its understanding that PURA §38.101 applied only to electric utilities, the commission chose to exclude electric cooperatives from reporting requirements relating to system hardening as reflected in §25.95(b).

TEC stated that under PURA §41.055, an electric cooperative's board of directors has exclusive jurisdiction to: (1) manage and operate the electric cooperative's utility system; (2) establish and enforce service quality standards, reliability standards, and consumer safeguards designed to protect retail electric customers; (3) determine any other utility matters; and (4) make any other decisions affecting the cooperative's method of conducting business. TEC claimed that to avoid any overlap between an electric cooperative's board of directors' jurisdiction and the commission's jurisdiction, the legislature limited the jurisdiction of the commission over electric cooperatives to a few very narrowly drawn areas to be consistent with PURA §41.055 and that specifically, the commission's jurisdiction to require reports from electric cooperatives is limited in PURA §41.004. TEC asserted that the commission may require reports of cooperative operations to the extent necessary to ensure public safety. TEC commented that the "Implementation Summary" under subsection (g)(2)(B) is not necessary to ensure public safety. TEC argued that PURA §41.004(5)(A), which permits the commission "to require reports of electric cooperative operations only to the extent necessary to ensure public safety," should be narrowly construed and that the meaning of the phrase "only to the extent necessary to ensure public safety" limits the commission in several respects. TEC contended that both the purpose and necessity of reporting must be established. TEC noted that ensuring the public safety does not appear to be the commission's sole purpose.

TEC referred to the preamble of the proposed rule and concluded that it indicated that the purpose of the commission is to gather data to assess the effectiveness of a cooperative's vegetation management efforts. TEC stated that it was not clear if the information was to be provided for any other purpose since none was stated in the preamble. TEC conceded that public safety was mentioned in the preamble language, but there was no showing of how public safety will be affected by the filing of the proposed reports. TEC indicated that cooperatives are concerned that the data proposed to be gathered by the commission will become a tool to assess their operations and specifically mentioned that the data may be used in a later study of all cooperative's vegetation management options or used by the media as a gotcha to assign blame after the fact for outages primarily caused by weather-related events. TEC concluded that in either case the focus of the data will be on the operations of one or more electric cooperatives and that the commission does not have jurisdiction to regulate a cooperative's operations, which are reserved to the cooperative's board of directors under PURA §41.055.

TEC further commented that under PURA §41.005(5)(A) the data to be provided in the proposed report must be necessary to ensure the public safety and the word "necessary" does not allow the commission the latitude to request data that is merely convenient, useful or conducive to the end sought to be achieved. TEC commented that in this case the data would not be necessary to ensure the public safety. TEC explained that the information to be provided in the "Implementation Summary" is not forward looking, but rather looks backward and that information related to the prior year has no direct bearing on the cooperative's operations for the current or future years. TEC also commented that the "Implementation Summary" does not meet the statutory standard of being necessary to ensure public safety because the commission lacks jurisdiction to order changes to an electric cooperative's vegetation management

operations. TEC asserted that under PURA §41.055 a cooperative's board of directors has exclusive jurisdiction to manage and operate the electric utility's system, including establishing and enforcing service quality standards and reliability standards. Thus, according to TEC, the commission would be powerless to use the information proposed to be provided as a basis for directing the cooperative to conduct its operations in any particular manner. TEC cited to *Entergy Texas, Inc. v. Public Util. Comm. et al.* which prohibits the commission from imposing "additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions" in support of its claim that the proposed rule imposes additional burdens on electric cooperatives in excess of or inconsistent with the relevant statutory provision, including PURA §38.101 and §41.004(5)(A).

TEC further commented that other statutory provisions stated in the preamble for the proposed rule as a basis for commission jurisdiction are not applicable or otherwise have no merit. TEC commented that PURA §14.001, which gives the commission the general power to regulate and supervise public utilities and §14.002, which requires the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, apply only to electric utilities and not electric cooperatives. Similarly, TEC asserted that PURA §38.005(a) and (e), which relate to electric service reliability measures, apply only to electric utilities and transmission and distribution utilities and an electric cooperative is neither one of those two types of entities. TEC claimed that PURA §41.004, which gives the commission jurisdiction over electric cooperatives to regulate certification to the extent provided in Chapter 37 of PURA, and PURA §37.151, which requires a certificate holder to serve every consumer in the utility's certificated service area and to provide continuous and adequate service in that area, does not provide authority to the commission and does not authorize the commission to supervise the provision of service since that function is specifically left to the board of directors of an electric cooperative in PURA §41.055. TEC commented on several other provisions in PURA to show that the commission does not have the authority to require electric cooperatives to file vegetation management reports, including PURA §§41.003 (Securitization), 41.054 (Service Outside Certificated Service Area), 41.056 (Anticompetitive Actions), 41.058 (Tariffs for Open Access), 41.059 (No Power to Amend Certificates), 41.060 (Customer Service Information), and 41.062 (Allocation of Stranded Investment).

Brazos's comments mirrored TEC's comments in asserting that the commission lacks jurisdiction to require electric cooperatives to file a vegetation management report since that falls squarely within the jurisdiction of an electric cooperative's board of directors to manage and operate an electric cooperatives' utility system under PURA §41.055. Brazos also commented that the information required to be included in a report, in particular detailed budget and actual expense information, exceeds the commission's jurisdiction under PURA §41.004(5) even as it relates to public safety.

Commission Response

Although the commission possesses the legal authority to adopt subsection (g), it declines to do so at this time. Should future circumstances warrant reconsideration, the commission may amend §25.96 to require electric cooperatives to report on their vegetation management activities. Nonetheless, the commission responds to the comments regarding the commission's legal authority to require electric cooperatives to file vegetation management reports.

The commission disagrees with TEC and Brazos and believes that it does have the authority to require an electric cooperative to file a report providing information about its vegetation management practices. The commission disagrees with TEC that PURA §38.101 limits the commission's ability to require electric cooperatives to file vegetation management reports. While that provision, which requires such reports, applies only to electric utilities, and electric cooperatives are not defined as electric utilities under PURA §31.002(6), that does not negate the statutory authority the commission does have to require cooperatives to file such reports under other statutory provisions, specifically PURA §§37.151, 41.004(2), and 41.004(5)(A) and (B).

Under PURA §41.004(5)(A), the commission has the authority to require reports of electric cooperative operations to the extent necessary to "ensure the public safety." This statutory provision was relied upon in the commission's adoption of §25.53, relating to Electric Service Emergency Operations Plans, on December 19, 2007 in Project Number 34202, *Rulemaking to Repeal P.U.C. SUBST. R. 25.53 and Propose New 25.53 Relating to Electric Service Emergency Operations Plans.* In §25.52(h)(2) and (3), the commission established specific reporting requirements for cooperatives that include descriptions of specific operational activities such as curtailment priorities, procedures for shedding load, rotating blackouts and planned outages, and priorities for restoration of service. In addition, in §25.53(h)(3)(J) and (4), the commission requires a cooperative to conduct an annual preparedness review and to modify its plan as necessary following the review. The vegetation management reports required in the current rulemaking have been tailored to meet the concerns expressed by the cooperatives throughout this rulemaking process, closely align with the requirements imposed in §25.53, and do not exceed the commission's authority to impose reporting requirements that allow the commission and others to discern whether the safety of the public is ensured by electric cooperatives' vegetation management.

The commission disagrees with ETC's comments as summarized in the General Comments section above that this rule is inconsistent with the relevant statutory provisions. PURA §38.001 requires that an electric cooperative furnish service, instrumentalities, and facilities that are safe. Through this rule, the commission endeavors to reduce the risk of wildfires and other public safety hazards that could result from inadequate vegetation management practices. Due to last year's drought, the number of electrical infrastructure-caused wildfires in Texas increased from 571 in 2010 to 2,450 in 2011. The number of acres burned by such wildfires increased from 25,853 in 2010 to 540,747 in 2011. Inadequate vegetation management can cause energized distribution lines to come in contact with vegetation, and that contact can result in the vegetation catching fire, thereby leading to wildfires. In addition, distribution lines that have fallen due to improper vegetation management can kill or seriously injure persons and animals that come into contact with them.

PURA §41.004(2) gives the commission jurisdiction over electric cooperatives "to regulate certification to the extent provided under Chapter 37." In addition, PURA §41.004(5)(B) gives the commission the authority to require reports of electric cooperative operations necessary to "enable the commission to satisfy its responsibilities relating to electric cooperatives under this chapter," including PURA §41.004(2). PURA §37.151 requires a certificate holder to "provide continuous and adequate service."

As indicated in the preceding paragraph, inadequate vegetation management practices can result in wildfires and other public safety hazards, which in turn can result in extensive service outages. Thus, inadequate vegetation management practices can mean that a cooperative is not providing continuous and adequate service.

Section 25.96(g)(2)(A)(ii): Vegetation Management Report

ETC stated that the definition of tree risk management is so broad that cooperatives must mitigate trees outside of their ROWs.

Commission Response

The commission declines to adopt subsection (g) for the reason stated previously.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission has made changes consistent with the discussion above and to clarify its intent.

The new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.001 (West 2007 & Supp. 2012) (PURA), which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designed or implied by this title that is necessary and convenient to the exercise of that power and 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; §37.151, which requires a certificate holder to provide continuous and adequate service in its area; §38.001, which requires an electric utility and electric cooperative to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; §38.005(a) and (e), which require the commission to implement service quality and reliability standards relating to the delivery of electricity to customers by electric utilities and transmission and distribution utilities and allows the commission to require electric utilities and transmission and distribution utilities to supply data to assist the commission in developing reliability standards; §38.101, which requires an electric utility to submit to the commission a report describing the utilities' activities related to vegetation management.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 37.151, 38.001, 38.005(a) and (e), and 38.101.

§25.96. Vegetation Management.

(a) Application. This section applies to an electric utility's (utility) distribution assets.

(b) Definitions. The following terms when used in this section shall have the following meaning, unless the context indicates otherwise.

(1) Distribution assets--The utility's facilities operating at less than 60 kilovolts (kV), excluding substations, underground facilities, and service drops, for which the utility needs to perform vegetation maintenance.

(2) Right-of-way (ROW)--Land on which electric lines are located and that the utility has the right to access for the purpose of maintaining its distribution system and managing vegetation.

(3) Scheduled vegetation maintenance--The anticipated vegetation management activities a utility expects to conduct during a particular budget cycle, including trimming, spraying, and removal activities.

(4) Tree risk management--Planning for, assessing, monitoring, and mitigating structurally unsound trees that could threaten a utility's distribution assets.

(5) Unscheduled vegetation maintenance--Responsive vegetation maintenance that can include, but is not limited to, customer-requested and utility-requested maintenance.

(c) Vegetation management requirements under other provisions. Compliance with this section fully satisfies the vegetation management planning and reporting requirements of §25.94(c)(2) of this title (relating to Report on Infrastructure Improvement and Maintenance) and §25.95(e)(2) of this title (relating to Electric Utility Infrastructure Storm Hardening).

(d) Utility conformance to standards of the industry. For any mandatory provision of any standard specified in paragraphs (1) - (3) of this subsection to which a utility's vegetation management policies do not conform, the utility shall provide a brief explanation for the deviation in its Vegetation Management Report:

(1) American National Standards Institute (ANSI) Standard Z133.1, *Arboricultural Operations - Pruning,* or successor standard;

(2) ANSI Standard A300 (Part 1) - *Tree, Shrub, and Other Woody Plant Management - Standard Practices (Pruning);* (Part 7) - *Integrated Vegetation Management a. Utility Rights-of-way practices;* and (Part 9) - *Tree Risk Assessment a. Tree Structure Assessment;* or successor standards; and

(3) National Electrical Safety Code Section 218, or successor standard.

(e) Vegetation Management Plan. Each utility shall maintain a Vegetation Management Plan (Plan) that describes the utility's objectives, practices, procedures, and work specifications for its distribution assets. A full copy of the Plan shall be provided to the commission or commission staff within ten days of receipt of the request. A utility shall review and update its Plan by December 31 of each year. The Plan shall include, at a minimum, a description of the utility's:

(1) tree pruning methodology, trimming clearances, and scheduling approach;

(2) methods used to mitigate threats posed by vegetation to applicable distribution assets;

(3) tree risk management program;

(4) participation in continuing education by the utility's internal vegetation management personnel;

(5) estimate of the miles of circuits along which vegetation is to be trimmed or method for planning trimming work for the coming year;

(6) plan to remediate vegetation-caused issues on feeders which are on the worst vegetation-caused performing feeder list for the preceding calendar year's System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI); and

(7) customer education, notification, and outreach practices related to vegetation management.

(f) Vegetation Management Report. A utility shall file with the commission by May 1 of each year a Vegetation Management Report (Report) summarizing its Vegetation Management Plan for the current

calendar year and its progress in implementing its Plan for the preceding calendar year. The Report filed May 1, 2013 does not need to contain the information required by paragraph (2) of this subsection. The Report shall include, at a minimum, the following components:

(1) A Vegetation Management Plan summary including, at a minimum, a summary of the utility's:

(A) vegetation maintenance goals and the method the utility employs to measure its progress;

(B) trimming clearances and scheduling approach;

(C) plan to remediate vegetation-caused issues on feeders that are on the vegetation-caused, worst performing feeder list for the preceding calendar year's SAIDI and SAIFI;

(D) tree risk management program;

(E) approach to monitoring, preparing for, and responding to adverse environmental conditions such as drought and wildfire danger that may impact its vegetation management policies and practices;

(F) total overhead distribution miles in its system, excluding service drops;

(G) total number of electric points of delivery;

(H) amount of vegetation-related work it plans to accomplish in the current calendar year to achieve its vegetation management goals described in subparagraph (A) of this paragraph; and

(I) vegetation management budget, divided into the categories listed in clauses (i) - (iv) of this subparagraph. The utility should, within the confines of its own budgeting practices, assign subcategories and list them under these categories where appropriate. If a utility does not budget amounts under any specific category, the utility shall provide a brief explanation of why it does not do so. The utility shall title the budget with the dates it covers and provide a total for each category or subcategory.

(i) scheduled vegetation maintenance;

(ii) unscheduled vegetation maintenance;

(iii) tree risk management; and

(iv) emergency and post-storm activities.

(2) An implementation summary for the preceding calendar year including, at a minimum, a description of:

(A) whether the utility met its vegetation maintenance goals and how its goals have changed for the coming calendar year based on the results;

(B) successes and challenges with the utility's strategy, including obstacles faced, such as property owner interference, and methods employed to overcome them;

(C) the progress and obstacles to remediating issues on the vegetation-caused, worst performing feeders list as submitted in the preceding year's Report;

(D) the number of continuing education hours logged for the utility's internal vegetation management personnel, if applicable;

(E) the amount of vegetation management work the utility accomplished to achieve its vegetation management goals described in paragraph (1)(A) of this subsection;

(F) the separate SAIDI and SAIFI scores for vegetation-caused interruptions for each month and as reported for the calendar year in its Service Quality Report filed pursuant to §25.52 of this title (relating to Reliability and Continuity of Service) and §25.81 of this title (relating to Service Quality Reports), at both the feeder and company level;

(G) the vegetation management budget, including, at a minimum:

(i) a single table with columns representing:

(I) the budget for each category and subcategory that the utility provided in the preceding year pursuant to paragraph (1)(I) of this subsection, with totals for each category and subcategory;

(II) the actual expenditures for each category and subcategory listed pursuant to subclause (I) of this clause, with totals for each category or subcategory;

(III) the percentage of actual expenditures over or under the budget for each category or subcategory listed pursuant to subclause (I) of this clause; and

(IV) the actual expenditures for the preceding reporting year for each category and subcategory listed pursuant to subclause (I) of this clause, with totals for each category or subcategory;

(ii) an explanation of the variation from the preceding year's vegetation management budget where actual expenditures in any category or subcategory fell below 98 percent or increased above 110 percent of the budget for that category;

(iii) the total vegetation management expenditures divided by the number of electric points of delivery on the utility's system, excluding service drops;

(iv) the total vegetation management expenditures, including expenditures from the storm reserve, divided by the number of customers the utility served; and

(v) the vegetation management budget from the utility's last base-rate case.

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 December 13, 2012.

TRD-201206468
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: January 2, 2013
Proposal publication date: July 27, 2012
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 197. EMERGENCY MEDICAL SERVICE

22 TAC §197.2, §197.3

The Texas Medical Board (Board) adopts amendments to §197.2, concerning Definitions, and §197.3, concerning Off-line

Medical Director. Section 197.2 is adopted without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8156) and will not be republished. Section 197.3 is adopted with non-substantive changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register.* The text of the rule will be republished.

The amendment to §197.2 adds the definition for Emergency Medical Services provider. The Board has determined that as a result of enforcing this section the board will use terminology consistent with other state agencies.

The amendment to §197.3 sets out additional requirements to be an off-line medical director, including CME, reporting to the Board all entities for which the physician acts as off-line medical director, and having protocols that prohibit the back-signing of transfer orders. The amendment also provides process for waivers of requirements. The Board has determined that as a result of enforcing this section, off-line medical directors will be held to certain standards and these standards will ensure that they adequately supervise those under their direction that are providing care to patients.

Elsewhere in this issue of the *Texas Register,* the Board contemporaneously adopts the rule review of Chapter 197.

The Board sought stakeholder input through Stakeholder Groups which made comments on the suggested changes to the rules at a meeting held on March 15, 2012. The comments were incorporated into the proposed rules.

The Board received public written comments and no one appeared to testify at the public hearing held on November 30, 2012.

The Board received no comments regarding §197.2.

The Board received comments regarding §197.3 from the Texas Medical Association (TMA), Dr. Robert Greenberg and several individuals.

COMMENT NUMBER 1

TMA commented that §197.3(c)(2) is overly broad. TMA requested that the language be more specific, such as clarifying the provision applies only if the physician's license has been suspended or revoked or the physician has been excluded from Medicare, Medicaid or CHIP.

The Board has responded to this comment by agreeing that the language should be modified. Given that the change would be substantive, however, the Board adopts the rule as proposed with the intent to amend the language at a board meeting convened in 2013 as follows:

(2) for any EMS provider if the physician *has been suspended or revoked for cause by any governmental agency or the physician has been excluded from Medicare, Medicaid, or CHIP.*

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure.

§197.3. Off-line Medical Director.

(a) An off-line medical director shall be:

(1) a physician licensed to practice in Texas and shall be registered as an EMS medical director with the Texas Department of State Health Services;

(2) familiar with the design and operation of EMS systems;

(3) experienced in prehospital emergency care and emergency management of ill and injured patients;

(4) actively involved in:

(A) the training and/or continuing education of EMS personnel, under his or her direct supervision, at their respective levels of certification;

(B) the medical audit, review, and critique of the performance of EMS personnel under his or her direct supervision;

(C) the administrative and legislative environments affecting regional and/or state prehospital EMS organizations;

(5) knowledgeable about local multi-casualty plans;

(6) familiar with dispatch and communications operations of prehospital emergency units; and

(7) knowledgeable about laws and regulations affecting local, regional, and state EMS operations.

(b) The off-line medical director shall be required to:

(1) approve the level of prehospital care which may be rendered locally by each of the EMS personnel employed by and/or volunteering with the EMS under the medical director's supervision, regardless of the level of state certification or licensure, before the certificant or licensee is permitted to provide such care to the public;

(2) establish and monitor compliance with field performance guidelines for EMS personnel;

(3) establish and monitor compliance with training guidelines which meet or exceed the minimum standards set forth in the Texas Department of State Health Services EMS certification regulations;

(4) develop, implement, and revise protocols and/or standing delegation orders, if appropriate, governing prehospital care and medical aspects of patient triage, transport, transfer, dispatch, extrication, rescue, and radio-telephone-telemetry communication by the EMS;

(5) direct an effective system audit and quality assurance program;

(6) determine standards and objectives for all medically related aspects of operation of the EMS including the inspection, evaluation, and approval of the system's performance specifications;

(7) function as the primary liaison between the EMS administration and the local medical community, ascertaining and being responsive to the needs of each;

(8) develop a letter or agreement or contract between the medical director(s) and the EMS administration outlining the specific responsibilities and authority of each. The agreement should describe the process or procedure by which a medical director may withdraw responsibility for EMS personnel for noncompliance with the Emergency Medical Services Act, the Health and Safety Code, Chapter 773, the rules adopted in this chapter, and/or accepted medical standards;

(9) take or recommend appropriate remedial or corrective measures for EMS personnel, in conjunction with local EMS administration, which may include, but are not limited to, counseling, retraining, testing, probation, and/or field preceptorship;

(10) suspend a certified EMS individual from medical care duties for due cause pending review and evaluation;

(11) establish the circumstances under which a patient might not be transported;

(12) establish the circumstances under which a patient may be transported against his or her will in accordance with state law, including approval of appropriate procedures, forms, and a review process;

(13) establish criteria for selection of a patient's destination;

(14) develop and implement a comprehensive mechanism for management of patient care incidents, including patient complaints, allegations of substandard care, and deviations from established protocols and patient care standards;

(15) only approve care or activity that was provided at the time the medical director was employed, contracted or volunteering as a medical director;

(16) notify the board at time of licensure registration under §166.1 of this title (relating to Physician Registration) of the physician's position as medical director and the names of all EMS providers for whom that physician holds the position of off-line medical director;

(17) complete the following educational requirements:

(A) within two years, either before or after initial notification to the board of holding the position as off-line medical director:

(i) 12 hours of formal continuing medical education (CME) as defined under §166.2 of this title (relating to Continuing Medical Education) in the area of EMS medical direction;

(ii) board certification in Emergency Medical Services by the American Board of Medical Specialties or a Certificate of Added Qualification in EMS by the American Osteopathic Association Bureau of Osteopathic Specialists; or

(iii) a DSHS approved EMS medical director course; and

(B) every two years after meeting the requirements of subparagraph (A) of this paragraph, one hour of formal CME in the area of EMS medical direction.

(c) A physician may not hold the position of off-line medical director:

(1) for more than 20 EMS providers unless the physician obtains a waiver under subsection (d) of this section; or

(2) for any EMS provider if the physician has been removed for cause by any governmental agency.

(d) The board may grant a waiver to allow a physician to serve as an off-line medical director for more than 20 EMS providers, if the physician provides evidence that:

(1) the Department of State Health Services has reviewed the waiver request and has determined that the waiver in the best interest of the public;

(2) the physician is in compliance with this chapter, by submitting documentation of protocols and standing orders upon request; and

(3) appropriate safeguards exist for patient care and adequate supervision of all EMS personnel under the physician's supervision.

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 December 13, 2012.

TRD-201206438
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: January 2, 2013
Proposal publication date: October 12, 2012
For further information, please call: (512) 305-7016

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 126. GENERAL PROVISIONS APPLICABLE TO ALL BENEFITS

28 TAC §126.17

The Commissioner of Workers' Compensation (Commissioner) of the Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts new §126.17 concerning Guidelines for Examination by a Treating Doctor or Referral Doctor After a Designated Doctor Examination to Address Issues Other Than Certification of Maximum Medical Improvement and the Evaluation of Permanent Impairment with changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7868).

The Division published an informal draft of the proposed section on the Division's website from August 2, 2012, until August 23, 2012, and received seven informal comments on the informal draft rule. Subsequent changes to the rule text were made based on the informal comments. The new section was proposed in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7868). A public hearing on the proposal was heard on October 15, 2012. The public comment period closed on November 5, 2012. The Division received 12 public comments.

Proposed §126.17(a) is being adopted with a change to subsection (a) in response to public comment. The adopted change, however, does not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. The change is described below.

Based on public comment received, the Division has revised the text of §127.17(a) for clarity. The revised text clarifies that an examination by the injured employee's treating doctor or another doctor to whom the injured employee is referred by the treating doctor to determine any issue other than certification of maximum medical improvement and evaluation of permanent impairment may be appropriate after a designated doctor examination under the circumstances prescribed in §126.17(a)(1) - (3). As explained in the Division's response to comment §126.17(a) below, the Division addressed the commenter's concern with clarifying language because Labor Code

§408.0041(f-2) governs post-designated doctor examinations on maximum medical improvement and impairment rating while Labor Code §408.0041(f-4) governs post-designated doctor examinations on issues other than certification of maximum medical improvement and the evaluation of permanent impairment.

In accordance with Government Code §2001.033(a)(1), the Division's reasoned justification for this rule is set out in this order, which includes the preamble. The preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, the names of entities who commented and whether they were in support of or in opposition to the adoption of the rule, and the reasons why the Division agrees or disagrees with the comments and recommendations.

This new section is adopted to implement statutory amendments in House Bill 2605, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011, (HB 2605) which codify into the Texas Workers' Compensation Act (Act) the ability of an injured employee who is required to be examined by a designated doctor to request an examination by the injured employee's treating doctor or a referral doctor to determine the issue(s) decided by the designated doctor.

Specifically, HB 2605 amended Labor Code §408.0041 by adding subsections (f-2) and (f-4). Under Labor Code §408.0041(f-2), an injured employee required to be examined by a designated doctor may request a medical examination to determine maximum medical improvement and the injured employee's impairment rating from the injured employee's treating doctor or another doctor to whom the injured employee is referred by the treating doctor if the designated doctor's opinion is the injured employee's first evaluation of maximum medical improvement and impairment rating and the injured employee is not satisfied with the designated doctor's report. Labor Code §408.0041(f-4) requires the Commissioner by rule to adopt guidelines prescribing the circumstances under which an examination by the injured employee's treating doctor or another doctor to whom the injured employee is referred by the treating doctor to determine any issue under Labor Code §408.0041(a), other than an examination under Labor Code §408.0041(f-2), may be appropriate.

Whereas Labor Code §408.0041(f-2) governs post-designated doctor examinations on maximum medical improvement and impairment rating, the rules required by Labor Code §408.0041(f-4) govern post-designated doctor examinations on issues other than certification of maximum medical improvement and the evaluation of permanent impairment. This adopted new section implements the requirements of Labor Code §408.0041(f-4).

Adopted New §126.17

Adopted new §126.17 sets forth guidelines prescribing the circumstances under which an examination by a treating doctor or referral doctor to determine any issue other than certification of maximum medical improvement and the evaluation of impairment rating, may be appropriate. This new rule is necessary in order to implement Labor Code §408.0041(f-4) which requires the Commissioner by rule to adopt such guidelines.

Adopted New §126.17(a)

Adopted new §126.17(a) provides that an examination by the injured employee's treating doctor or another doctor to whom the injured employee is referred by the treating doctor to determine any issue other than certification of maximum medical improvement and the evaluation of permanent impairment may be appropriate after a designated doctor examination if: (1) the designated doctor issued an opinion on the issue; (2) the injured employee is not satisfied with the designated doctor's opinion; and (3) the treating doctor or a referral doctor has not already provided the injured employee with a written report that meets the standard described by subsection (b) of this new section on the issue addressed by the designated doctor. These prescribed circumstances are necessary in order to allow the injured employee to seek a second opinion of the designated doctor's report only when a dispute with the designated doctor report exists. The prescribed circumstances therefore are designed to allow a treating doctor or referral doctor examination after a designated doctor examination only when the injured employee is not satisfied with the designated doctor's decision on the issue and the treating doctor or a referral doctor has not already provided the injured employee with a written report that can be used to dispute the designated doctor's report. Additionally, the prescribed circumstances are necessary in order to prevent duplicative examinations by the treating doctor or a referral doctor on the issue(s) addressed by the designated doctor which could impose unnecessary costs on the workers' compensation system.

Adopted New §126.17(b)

Adopted new §126.17(b) provides that the treating or the referral doctor shall complete a narrative report. The report should include objective findings of the examination and an analysis that explains how the objective findings lead to the conclusion reached by the doctor in order to be useful to and assist the injured employee in dispute resolution. This report must be filed with the insurance carrier, the injured employee, and the injured employee's representative. Notwithstanding §129.5 of this title (relating to Work Status Reports), if the treating doctor or the referral doctor examines the injured employee to address an issue relating to return to work, the doctor must also file a Work Status Report. A narrative report is necessary because it documents the doctor's findings. The direction of what this report should contain is necessary in order to ensure that the report is of sufficient quality to be useful in the dispute resolution process if the injured employee is not satisfied with the designated doctor's opinion, which, by statute, has presumptive weight. Additionally, this subsection is necessary in order to ensure that all parties have notice of the treating or referral doctor's opinion on the issue(s) that was the subject of the examination.

Adopted New §126.17(c)

Adopted new §126.17(c) provides that the insurance carrier shall reimburse the injured employee reasonable travel expenses incurred as specified in Chapter 134, Subchapter B of this title (relating to Miscellaneous Reimbursement) in attending an appropriate medical examination. This adopted subsection is necessary to clarify that existing Division rules in Chapter 134, Subchapter B of this title that govern reimbursement of travel expenses will apply as specified in those rules when an injured employee attends an examination that is appropriate under this adopted new section.

Adopted New §126.17(d)

Adopted new §126.17(d) provides that nothing in §126.17 is construed to limit or prohibit the injured employee from obtaining reasonable and necessary medical care for the compensable injury or from obtaining a written report from a treating doctor or a referral doctor on any issue under Labor Code §408.0041(a)(3) - (6) prior to a designated doctor examination. This adopted new

subsection is necessary in order to provide clarity and to prevent anyone from construing this section in a manner that would prevent an injured employee from obtaining any medical benefit or written report the injured employee is entitled to under Labor Code Title 5 and Division rules. This adopted new subsection also clarifies that §126.17 does not limit an injured employee's ability to obtain a written report from a treating or referral doctor prior to a designated doctor examination since adopted new §126.17 provides guidelines for the appropriateness of these examinations after a designated doctor examination.

SUMMARY OF COMMENTS AND AGENCY RESPONSES

General: Commenters appreciates the hard work of Division staff on the proposed rule. Commenters support the adoption of the new rule as it is currently proposed and does not see a need for any changes to the rule as the rule tracks the intent of the Texas Legislature as expressed in Labor Code §408.0041(f-2) and (f-4). A commenter notes that the Division made numerous changes after publication of the informal draft proposal which provide greater clarity to the rule.

Agency Response: The Division appreciates the support.

General: Commenters generally question the wisdom of allowing treating doctors and referral doctors making these opinions without safeguards that would ensure their impartiality when making their opinions. For example, the commenters recommend the rule contain provisions similar to those for designated doctors and required medical examiners which would prohibit the doctor conducting this examination from being in the treating doctor's Certified Workers' Compensation Healthcare Network (certified network) or having other disqualifying associations in order to provide a fair and unbiased opinion and avoid any potential adverse actions for the injured employee. The commenters believe this kind of necessary independence is essential to provide and maintain a fair and unbiased opinion of the evaluating doctor similar to that of a designated doctor.

Agency Response:

The Division disagrees with the comment and recommendation. This rule implements the provisions of Labor Code §408.0041(f-4) which requires the Commissioner by rule to adopt guidelines prescribing the circumstances under which an examination by the injured employee's treating doctor or another doctor to whom the injured employee is referred by the treating doctor to determine any issue under Labor Code §408.0041(a), other than maximum medical improvement and impairment rating, may be appropriate. This statute codifies into the Act examinations that were already being performed in the workers' compensation system and this rule prescribes guidelines under which these examinations may be appropriate as required by statute. Labor Code §408.0041(f-4) specifies the examination be conducted by the injured employee's treating doctor or a referral doctor and the statute does not include the limitations requested by the commenter in which the treating doctor or referral doctor may perform the examination. For claims that are in a network certified under Insurance Code Chapter 1305, the Division expects treating doctors to make their referrals to other network doctors as required by Insurance Code Chapter 1305. Requirements similar to those for designated doctors and required medical examiners, including prohibiting certified network or other affiliations to the treating doctor, do not make any sense in this context.

General: Commenters recommend that the doctor performing the evaluation be certified by the Division, properly trained and currently eligible and qualified to perform impairment rating evaluations.

Agency Response: The Division disagrees. The examination in this rule is not for maximum medical improvement and impairment rating, therefore there are no eligibility and certification requirements requested by commenters for examinations in §126.17(a).

General: Commenters object to the reimbursement level being referenced to that of an established patient office visit. The commenters believe the appropriate allowable reimbursement should be tied to the level of work as that of a designated doctor because the level of service would essentially be equivalent to that of a designated doctor and should have the same reimbursement level of a designated doctor as provided in the applicable Division rules.

Agency Response: The Division disagrees. This comment pertains to reimbursement levels which are governed by Division rules in Chapter 134 of this title. This comment is therefore outside the scope of this rule which implements Labor Code §408.0041(f-4). As stated in the proposal, the Division anticipates treating and referral doctors who conduct these examinations under this rule will bill for these examinations using existing evaluation and management codes indicating that an office visit occurred, which is consistent with the manner that health care providers currently use to bill for these examinations.

General: Commenters recommend a provision requiring and allowing the evaluating doctor to review all of the medical records prior to rendering a decision disputing a designated doctor who has a similar requirement.

Agency Response: The Division disagrees. A provision in this rule requiring and allowing the evaluating doctor to review all of the medical records prior to rendering a decision disputing a designated doctor is not necessary because, as a practical matter, the treating doctor generates most of the injured employee's medical records. Further, under the adopted §126.17(b) requirements, the treating doctor or a referral doctor shall complete a narrative report which should include objective findings of the examination and an analysis that explains how the objective findings lead to the conclusion reached by the doctor. Preparing a narrative report requirement will necessarily involve the treating doctor or referral doctor to review appropriate medical records. Finally, unlike designated doctor examinations, the treating doctor or referral doctor examinations are not ordered by the Division.

General: A commenter suggests providing or referencing a mechanism to permit a designated doctor to clarify any issues per Division-initiated or carrier-requested Letter of Clarification (LOC) once the injured employee requests a post-designated treating doctor examination. LOCs may avoid the necessity of post-designated treating doctor examinations in appropriate circumstances and lower system expense.

Agency Response: The Division disagrees and clarifies that requesting an LOC regarding designated doctor reports is addressed by §127.20 of this title (relating to Requesting a Letter of Clarification Regarding Designated Doctor Reports). As such, there is already a mechanism that can be utilized as suggested by the commenter and nothing in this rule prohibits that use. Furthermore, Labor Code §408.0041(f-4) requires the Commissioner by rule to adopt guidelines for these examinations by a treating or referral doctor after a designated doctor examination.

General: A commenter states that the rule does not provide for consequences of a no-show for the examination, the commenter also suggests that the Division may wish to emphasize the necessity of follow-through, limit availability in situations of abuse, or provide that no-shows do not create liability under §130.2(b)(3) or (c).

Agency Response: The Division disagrees and clarifies that the examination which is the subject of this rule is not a Division-ordered examination. The natural consequence of a "no show" is the injured employee's inability to get the second opinion that could be used in the dispute resolution process. The Division is not clear as to what liability under §130.2(b)(3) or (c) the commenter is referring to as those subdivisions do not exist in the rule; however, assuming commenter is referring to liability for reimbursement, the Division clarifies there should be no bill for service that is not rendered.

General: A commenter disapproves of the rule proposal and expresses concern with some doctors gaming the system. The commenter also believes the proposed rule has a potential for abuse by workers' compensation attorneys who commenter says have their own list of consulting designated doctors. The commenter opines that the proposed rule makes it easier to challenge sound designated doctor evaluations and recommends ensuring challenges are backed with facts, references to contemporary medical literature, applied anatomy and physiology, the laws of physics, causation, MDA, ODG and objective evidence. The commenter recommends that subjective complaints used to validate a challenge should automatically invalidate the challenge, insurance carriers have the ability to withhold payment if a treating doctor report is suspect and that such opposing reports go to the Medical Qualify Review Panel (MQRP) to settle the differences. The commenter also opines that the proposed rule makes it easier to obtain a second opinion from treating doctors and will cost insurance premiums to rise. To avoid potential problems, commenter recommends a system wherein if an injured employee desires a second designated doctor opinion, the Division would randomly assign a designated doctor from a designated doctor list prepared by the Division.

Agency Response: The Division disagrees. First, as stated, this rule is necessary because Labor Code §408.0041(f-4) requires the Commissioner by rule to prescribe the circumstances under which these treating doctor and referral doctor examinations may be appropriate. Next, the Division notes that this statute codifies into the Act examinations that were already being performed in the workers' compensation system and this adopted rule prescribes guidelines under which these examinations may be appropriate as required by statute.

The Division disagrees with rule modifications in response to commenter's statements that challenges to a designated doctor report should be backed up with facts, objective evidence, and references to relevant medical authority; subjective complaint's used to validate a challenge should automatically invalidate the challenge; insurance carriers have the ability to withhold payment if a treating doctor report is suspect; and that such opposing reports go to the Medical Qualify Review Panel (MQRP) to settle the differences. Any changes to the rule are unnecessary because commenter's concerns are already adequately addressed by the adopted rule and other Division processes. First, the adopted rule provides that the required narrative report from the treating or referral doctor should include objective findings of the examination and an analysis that explains how the objective findings lead to the conclusion reached by the doctor. Second, should an examination result in a report in opposition to the designated doctor's opinion and that report be used to dispute the designated doctor's opinion, what weight to give the opposing report is best determined by an impartial hearings officer in the Division's dispute resolution process who will be able to examine the opposing reports, hear arguments from both sides to the dispute, and determine what weight each report is due considering all of the facts and circumstances and applicable legal principles.

Regarding easier second opinions and rising insurance premiums, §126.17(a) prescribes the circumstances under which these treating doctor and referral doctor examinations may be appropriate. The prescribed circumstances prevent duplicative examinations by the treating doctor or a referral doctor on the issue(s) decided by the designated doctor and prevent unnecessary costs on the workers' compensation system.

Finally, the Division disagrees with commenter's alternative system that would involve the random assignment of a designated doctor from a Division list. The recommended action is outside the scope of the rule which is to implement Labor Code §408.0041(f-4) and is not necessary in prescribing guidelines for examination by a treating doctor or referral doctor after a designated doctor examination to address issues other than certification of maximum medical improvement and the evaluation of permanent impairment.

§126.17(a): A commenter expresses concern that proposed §126.17(a) could be interpreted as authorizing a treating doctor or another doctor to examine an injured employee to determine issues similar to (1) the impairment caused by the compensable injury or (2) the attainment of maximum medical improvement, which is contrary to the language in Labor Code §408.0041(f-2) and (f-4). The commenter recommends clarifying rule language.

Agency Response: The Division disagrees. Labor Code §408.0041(f-2) governs post-designated doctor examinations by treating doctors and referral doctors to determine impairment rating and maximum medical improvement, issues set out in Labor Code §408.0041(a)(1) and (2), respectively. Labor Code §408.0041(f-4) governs post-designated doctor examinations by treating doctors and referral doctors on any issue under Labor Code §408.0041(a), other than an examination under Labor Code §408.0041(f-2) which as stated only governs examinations to determine impairment rating and maximum medical improvement. Nothing in the plain language of Labor Code §408.0041(f-2) indicates that it is intended to govern similar issues under Labor Code §408.0041(a)(6). Thus, a fair interpretation of these statutes is that similar issues under Labor Code §408.0041(a)(6) are governed by Labor Code §408.0041(f-4) and this rule adopted in accordance with Labor Code §408.0041(f-4).

Although the Division disagrees with the commenter's recommended language because it is not consistent with the statutory provisions under Labor Code §408.0041(a)(3) - (6) which describe the issue(s) the examination may address, the Division revised the text for clarity (see underlined) with no substantive changes. The text of §126.17(a) now reads: (a) An examination by the injured employee's treating doctor or another doctor to whom the injured employee is referred by the treating doctor to determine any issue other than certification of maximum medical improvement and the evaluation of permanent impairment may be appropriate after a designated doctor examination if: (1) the designated doctor issued an opinion on the issue; (2) the injured employee is not satisfied with the designated doctor's opinion; and (3) the treating doctor or the referral doctor has not already

provided the injured employee with a written report that meets the standard described by subsection (b) of this section on the issue addressed by the designated doctor.

§126.17(a): A commenter opines that the Division's proposed three requirements for a subsequent examination are much too lenient. The first two proposed conditions, that the designated doctor issued an opinion and that the injured employee is not satisfied with the opinion, are really not standards at all because they are self-evident. Thus, the only actual proposed requirement to obtain a subsequent examination is that the treating doctor originally failed to provide a written report including objective findings and an analysis of how the objective findings lead to the doctor's conclusion. This sole requirement seems more like an invitation for treating doctors not to complete a thorough objective narrative report making it an inadequate safeguard to protect against unnecessary, costly and time-delaying requests for subsequent medical examinations. Lack of meaningful standards means both costs and delays will multiply during the dispute resolution process, frustrating the goals of the designated doctor process, increasing costs for Texas employers who participate in the workers' compensation system with no ultimate benefit for the injured employee. The proposed rule should be modified to set more appropriate standards. The commenter recommends mirroring the requirement under Labor Code §408.0041(f-2) where a subsequent evaluation is only permitted when the designated doctor's opinion is the first evaluation received by the injured employee on the issue and the injured employee is not satisfied with the opinion. To save costs and avoid delay, the treating doctor or the injured employee's representative should set forth valid objective, evidence-based medical reasons for disputing the designated doctor's opinion to justify the expense and time.

Agency Response: The Division disagrees that the guidelines for examination by a treating doctor or referral doctor after a designated doctor examination to address issues other than the certification of maximum medical improvement and the evaluation of impairment rating are too lenient and that they are inconsistent with the legislative purpose of the designated doctor system.

The rule implements Labor Code §408.0041(f-4) which requires the Commissioner by rule to adopt guidelines prescribing the circumstances under which an examination by the injured employee's treating doctor, or another doctor to whom the injured employee is referred by the treating doctor to determine any issue under Labor Code §408.0041(a), other than an examination under Labor Code §408.0041(f-2), may be appropriate. The guidelines adopted under Labor Code §408.0041(f-4) are tailored to achieve the legislative objective of this legislation in that it provides that these examinations may be appropriate when the designated doctor issued an opinion on the issue; the injured employee is not satisfied with the designated doctor's opinion; and the treating doctor or the referral doctor has not already provided the injured employee with a written report that meets the required standard which should include objective findings of the examination and an analysis that explains how the objective findings lead to the conclusion reached by the doctor. Additionally, a narrative report is necessary in order for there to be documentation of the doctor's findings that can be used in the dispute resolution process. More stringent standards would not have achieved the legislative objective.

In enacting Labor Code §408.0041(f-4), the Legislature codified into the Act post-designated doctor examinations by treating doctors and referral doctors that were already occurring in the workers' compensation system. Prior to the adoption of this rule, there was no guidance as to when these treating doctor examinations post-designated doctor examination were appropriate. This rule establishes reasonable circumstances under which these examinations may be appropriate as required by statute. This rule is not intended to allow for reimbursement to treating doctors and referral doctors who engage in gaming the system that result in unnecessary, costly and time-delaying requests for subsequent examinations. The Division will monitor the implementation of this rule and should abusive activities occur, the Division will revisit this rule and make necessary changes.

The Division disagrees with commenter's suggestion that the rule mirror the first evaluation requirement under Labor Code §408.0041(f-2). This rule provides parity regarding required medical examinations for injured employees. Whereas §126.6 of this title (relating to Required Medical Examination) provides an insurance carrier the ability to request a Division-ordered examination, this rule provides a similar mechanism for an injured employee to potentially get a second opinion to be used in the Division's dispute resolution process, the outcome of which will be decided in the Division's dispute resolution process. Additionally, Labor Code §408.0041(f-4) issues have less sense of finality than the issues covered by Labor Code §408.0041(f-2) therefore there may be more than one designated doctor examination to address these issues over the life of the claim and as a result, there may be more than one treating doctor examination. The Division also disagrees with commenter's second suggested requirement that would require the treating doctor or the injured employee's representative setting forth valid objective, evidence-based medical reasons for disputing the designated doctor's opinion to justify the expense and time as it may be too strict of a standard because such evidence may be unavailable or nonexistent. In fact, the purpose of Labor Code §408.0041(f-4) and this rule is to provide a mechanism for the injured employee to obtain such medical evidence.

§126.17(a)(3): A commenter is concerned the term "issue" is too broad. It appears that this provision may unnecessarily limit the ability of the treating doctor or a referral doctor to address some questions that a designated doctor addresses simply because the doctor has addressed a similar issue in the past. The commenter recommends clarification that the treating doctor's or a referral doctor's written report on an issue in one period will not prevent the doctor from addressing similar questions for a different period. The commenter recommends revising the subsection by adding "precise" before "issue" to clarify.

Agency Response: The Division disagrees that the term issue is too broad and declines to revise the subsection because it is not necessary. The "issue" in question is the issue the designated doctor was assigned by the Division to address as opposed to the issue in general. The Division may order a designated doctor to address an issue under Labor Code §408.0041(a) such as different quarters and qualifying periods for supplemental income benefits, different periods of return to work or different activity restrictions.

§126.17(b): A commenter recommends striking language that the narrative report "includes objective findings of the examination and an analysis that explains how the objective findings lead to the conclusion reached by the doctor." The report from the treating doctor or a referral doctor is designed to function in exactly the same way as the report from the post-designated doctor required medical examination (RME) doctor. The commenter

notes that §126.6(h), the subsection requiring that the RME file a narrative report, does not contain the same requirements of the narrative report. It is unclear why the report from the treating doctor or referral doctor should be held to a standard not required of the RME's report. The commenter also notes the purpose of this provision is primarily to facilitate payment to the treating or referral doctor when a report is needed by the injured employee to challenge a designated doctor report and believes this provision introduces subjectivity on the adequacy of the report and arguably calls into question payment for the report, the primary purpose of this rule.

Agency Response: The Division disagrees that the rule language as proposed should be stricken. Objective findings of the examination and an analysis that explains how the objective findings lead to the conclusion reached by the doctor are necessary because they document the doctor's findings sufficiently. The direction of what this report should contain is necessary in order to ensure that the report is of sufficient quality to be useful in the dispute resolution process if the injured employee is not satisfied with the designated doctor's opinion, which, by statute, has presumptive weight. The quality of the report provides evidence to assist in a prompt and fair dispute resolution process, one of the basic goals of the workers' compensation system under Labor Code §402.021. Contrary to the commenter's assertion, "includes objective findings of the examination and an analysis that explains how the objective findings lead to the conclusion reached by the doctor" is consistent with §126.6(e) of this title (relating to Required Medical Examination). Because the narrative report should include objective findings of the examination and an analysis that explains how the objective findings lead to the conclusion reached by the doctor, it does not introduce subjectivity on the issue of adequacy of the report. The Division disagrees that the purpose of this provision is primarily to facilitate payment to the treating or referral doctor when a report is needed by the injured employee to challenge a designated doctor report. The purpose of the rule is to implement Labor Code §408.0041(f-4).

§126.17(b) A commenter suggests Office of Injured Employee (OIEC) Ombudsmen should be included as lay representatives when the report is required to be filed with the insurance carrier, the injured employee and the employee's representative. The commenter believes the addition of "including ombudsman" in the third sentence is necessary because injured employees often forget to bring documents to the Ombudsmen or misplace documents sent to them. If Ombudsmen have the information necessary to assist injured employees, the system operates more smoothly and effectively.

Agency Response: The Division disagrees. This subsection properly limits the parties to representatives because lay representatives, pursuant to §150.3 of this title (relating to Representatives: Written Authorization Required), must submit written verification to the Division that the person is representing an injured employee. The Division may not have notice, however, of when an OIEC ombudsman is participating on the claim, making it difficult to determine if a particular ombudsman is appropriately included in this subsection for a particular claim. Additionally, whether OIEC ombudsmen should qualify as lay representatives under §150.3 of this title is outside the scope this rule.

§126.17(c): A commenter seeks clarification regarding travel reimbursement. Commenter suggests that proposed subsection (c) lends itself to an argument that the insurance carrier must reimburse the injured employee if they travel more than 30 miles to attend the "appropriate medical examination" rather than predicating the entitlement to the availability of medical treatment and provides an example. The commenter recommends deleting this subsection and allowing the provisions of §134.110 of this title (relating to Reimbursement of Injured Employee for Travel Expenses Incurred) to control the manner in which injured employees are reimbursed for necessary travel. In the alternative, commenter recommends modifying the subsection as proposed to state: "The insurance carrier shall reimburse the injured employee for all reasonable travel expenses related to attending an appropriate medical examination under this section subject the entitlement and reimbursement provisions specified in Chapter 134, Subchapter B of this title (relating to Miscellaneous Reimbursement)."

Agency Response: This Division disagrees with deleting this subsection because it is necessary to clarify that rules in Chapter 134, Subchapter B of this title that govern travel reimbursement for injured employees will apply as provided in those rules to an injured employee who attends an appropriate examination. When read together with Division rules in Chapter 134 that govern travel reimbursement, this adopted rule makes travel expenses incurred in attending an appropriate examination a reimbursable expense, and the rules in Chapter 134 will govern when these travel expenses will be reimbursed to the injured employee. The Division also disagrees with commenter's suggested text because the adopted rule is sufficiently clear that the rules in Chapter 134, which include the availability provisions in §134.110, will apply in determining whether travel reimbursement is due to an injured employee for attending an appropriate medical examination under the adopted rule. Specifically, the adopted rule states that the "insurance carrier shall reimburse the injured employee for all reasonable travel expenses *as specified in Chapter 134, Subchapter B of this title (relating to Miscellaneous Reimbursement)* for attending an appropriate medical examination." (italics added)

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL

For: Insurance Council of Texas and Property Casualty Insurers Association of America

For, with changes: American Insurance Association, Integrated Health Services, LLC, Office of Injured Employee Counsel, State Office of Risk Management, Texas Mutual Insurance Company, and two individuals

Against: An individual

Neither for or Against: Texas Department of Transportation

This new rule is adopted under the Labor Code §408.0041, and under the general authority of §§402.00111, 402.0128, and 402.061. In relevant part, Labor Code §408.0041 sets forth that the Commissioner by rule shall adopt guidelines prescribing the circumstances under which an examination by the injured employee's treating doctor or another doctor to whom the injured employee is referred by the treating doctor to determine any issue under Labor Code §408.0041(a), other than an examination under Labor Code §408.0041(f-2), may be appropriate.

Labor Code §402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under Title 5, Labor Code.

Labor Code §402.00128 lists the general powers of the Commissioner including the power to hold hearings and the authority

to assess and enforce penalties as authorized by Title 5, Labor Code.

Labor Code §402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

§126.17. Guidelines for Examination by a Treating Doctor or Referral Doctor After a Designated Doctor Examination to Address Issues Other Than Certification of Maximum Medical Improvement and the Evaluation of Permanent Impairment.

(a) An examination by the injured employee's treating doctor or another doctor to whom the injured employee is referred by the treating doctor to determine any issue other than certification of maximum medical improvement and the evaluation of permanent impairment may be appropriate after a designated doctor examination if:

(1) the designated doctor issued an opinion on the issue;

(2) the injured employee is not satisfied with the designated doctor's opinion; and

(3) the treating doctor or the referral doctor has not already provided the injured employee with a written report that meets the standard described by subsection (b) of this section on the issue addressed by the designated doctor.

(b) The treating doctor or the referral doctor shall complete a narrative report. The report should include objective findings of the examination and an analysis that explains how the objective findings lead to the conclusion reached by the doctor. This report shall be filed with the insurance carrier, the injured employee and the injured employee's representative. Notwithstanding §129.5 of this title (relating to Work Status Reports), if the treating doctor or the referral doctor examines the injured employee to address an issue relating to return to work, the doctor must also file a Work Status Report.

(c) The insurance carrier shall reimburse the injured employee for all reasonable travel expenses as specified in Chapter 134, Subchapter B of this title (relating to Miscellaneous Reimbursement) for attending an appropriate medical examination.

(d) Nothing in this section is construed to limit or prohibit the injured employee from obtaining reasonable and necessary medical care for the compensable injury or from obtaining a written report from a treating doctor or a referral doctor on any issue under Labor Code §408.0041(a)(3) - (6) prior to a designated doctor examination.

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 December 17, 2012.

TRD-201206503
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: January 6, 2013
Proposal publication date: October 5, 2012
For further information, please call: (512) 804-4703

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 8, 2012, adopted the repeal of §§51.621 - 51.624, 51.632, 51.643, 51.644, 51.661, 51.662, 51.673, and 51.674 and amendments to §§51.3, 51.70, 51.71, 51.151, 51.201, 51.204, 51.300, 51.303, 51.304, and 51.601 without changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7941).

The repeals and amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Parks and Wildlife Code, §11.0162, authorizes the Chairman of the Texas Parks and Wildlife Commission to "appoint committees to advise the commission on issues under its jurisdiction." Government Code, Chapter 2110, requires that rules be adopted regarding each state agency advisory committee. Unless otherwise provided by specific statute, the rules must (1) state the purpose of the committee; (2) describe the manner in which the committee will report to the agency; and (3) establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Under the provisions of 31 TAC §51.601(d), all advisory committees expired on October 1, 2010 unless otherwise provided by law. In 2010, the department amended rules regarding several advisory committees to extend the expiration of those committees until October 2014 (October 15, 2010, issue (35 TexReg 9321)). The advisory committees that were not extended expired in October 2010 pursuant to §51.601. The repeal of §§51.621 - 51.624, 51.632, 51.643, 51.644, 51.661, 51.662, 51.673, and 51.674 eliminate advisory groups that have expired and which the department has determined are no longer necessary, either because they have served their purpose and become superfluous or because their function has been subsumed within another advisory group. Sections 51.621 (Artificial Reef Advisory Committee), 51.622 (Blue Crab Advisory Committee), 51.623 (Oyster Advisory Committee), and 51.624 (Shrimp Advisory Committee) are repealed because they have expired and the Coastal Resources Advisory Committee can perform the advisory functions regarding those coastal fisheries resources. Section 51.632 (Texas Rivers Conservation Advisory Board) is repealed because the term of the committee has expired and the Freshwater Fisheries Advisory Committee can perform the advisory functions regarding freshwater fisheries resources in Texas rivers. Section 51.643, concerning Historic Sites Advisory Committee, and §51.644, concerning Big Bend Ranch State Park Task Force, are repealed because the term of the Historic Sites Advisory Committee has expired and the Big Bend Ranch State Park Task Force has completed its duties, although the State Parks Advisory Committee can perform advisory functions concerning historic sites and Big Bend Ranch State Park issues. Section 51.661, regarding Expo Advisory Committee, is repealed because the term of the committee has expired and the department has discontinued the Texas Parks and Wildlife Expo. Section 51.661, concerning Outreach, Interpretation, and Education Advisory Committee, is repealed because no membership was reappointed following the expiration of the original

committee. The remaining sections (§51.673, concerning Land Resources Advisory Committee; §51.674, concerning Aquatic Resources Advisory Committee) are repealed because no membership was ever appointed and the committees were never assembled.

The department notes that although the repeals as adopted eliminate certain advisory committees, the commission has the authority to reconstitute or create an advisory committee to assist the department on any issue as circumstances warrant.

The amendment to §51.3, concerning Consideration and Disposition, changes the title of the section to "Consideration and Disposition of Petitions for Rulemaking" to more accurately describe the section. The amendment also increases the amount of time for staff to submit a recommendation to the department's executive director regarding a petition for rulemaking. Under the provisions of Government Code, §2001.021, an interested person by petition may request that a state agency adopt a rule, and each state agency is required to prescribe by rule the form for such petitions and the procedure for the submission, consideration, and disposition of petitions. The statute also stipulates that not later than the 60th day after the date of submission of a petition for rulemaking, a state agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rulemaking. Under current §51.3, after staff has prepared a recommendation regarding a petition for rulemaking, the petition is forwarded to each member of the commission, accompanied by the staff recommendation. If the staff recommendation is to deny the petition for rulemaking and if within 50 days after the date the department received the petition no commissioner requests that the department initiate rulemaking, the petition is considered denied. Under current §51.3, staff must provide a recommendation to the department's executive director within 10 days after receiving the petition for rulemaking. The department recently has been presented with petitions of some complexity and consequently has concluded that 10 days is an insufficient amount of time for staff to thoroughly analyze the impacts of suggested regulatory changes. The department therefore amends §51.3(a) to increase the time period to 15 days. The department also amends §51.3(f) to update cross references to hunting and fishing regulations located in other parts of the Texas Administrative Code.

The amendment to §51.70, concerning Gifts to the Department, clarifies and streamlines the department's process for accepting gifts. Under Government Code, §575.003, a state agency that has a governing board may accept a gift of cash or property valued at greater than $500 only if the agency has the authority to accept the gift and a majority of the board, in an open meeting, acknowledges the acceptance of the gift not later than the 90th day after the date the gift is accepted. Under Parks and Wildlife Code, §11.026, the department may accept gifts of property or money in support of any department purpose authorized by the Parks and Wildlife Code. Under Parks and Wildlife Code, §11.0182, the commission is required to adopt policies by rule to govern fund-raising activities by department employees on behalf of the department with respect to gifts of greater than $500. Current §51.70 allows the department's executive director or his or her designee to contingently accept gifts of money or property of more than $500, in accordance with the commission's budget policy, prior to the formal acknowledgment of such gifts by the commission "upon approval by the presiding officer of the commission and the Chair of the commission's finance committee in accordance with the commission's budget policy." The commission meets five times per year. By allowing acceptance between commission meetings, the rule allows the department to more efficiently and immediately utilize gifts in support of agency functions. The amendment replaces the requirement that the acceptance of gifts of more than $500 be approved by both the chair of the commission and the chair of finance committee with a requirement that the acceptance of such gifts be approved by the chair or vice-chair of the commission or a commissioner authorized to approve the acceptance of gifts under the commission's budget policy. The commission is moving away from an organizational structure that consists of several standing committees. As a result, the position of financial committee chair will no longer exist. In addition, by providing various options for approving the acceptance of gifts, the amendment enhances the department's ability to more immediately utilize gifts in support of agency functions.

The amendment to §51.71, concerning Employee Fundraising Activities, alters paragraph (1) to acknowledge that the acceptance of gifts and donations is governed by Chapter 51, Subchapter C, and not solely by §51.71. The amendment also replaces the plural possessive "their" with the singular possessive "the employee's" to correct a grammatical error.

The amendment to §51.151, concerning Use of Uninscribed Vehicles, changes the title of the section to "Vehicle Inscriptions." The amendment also delegates authority to the executive director to allow inscriptions on state vehicles that do not obscure any required inscriptions, have been approved in advance by the executive director, are in the best interest of the department and do not conflict with the department's mission or goals, and are not more prominent than and do not overshadow the role of the department. Transportation Code, §721.002, requires certain markings on state-owned motor vehicles. However, Transportation Code, §721.003, allows the governing body of certain state agencies, including the department, to exempt an agency's motor vehicle from the marking requirements by rule. Current §51.151 delegates to the executive director the authority to approve the use of certain uninscribed vehicles. The amendment also delegates to the executive director the authority to approve inscriptions on department vehicles other those required by Transportation Code, Chapter 721, so long as the inscriptions meet the requirements of the amendment. The amendment allows, for example, department vehicles to bear messaging that acknowledges the sponsorship contributions that assist the department in furthering its mission.

The amendment to §51.201, concerning Definitions, removes references to Government Code, Chapter 2166, from the definitions of "contract" and "project" since Government Code, §2166.003(a)(4) specifically exempts the department from the applicability of Chapter 2166. However, the amendment does not alter the applicability of Subchapter J to disputes involving construction contracts.

The amendment to §51.204, concerning Notice of Claim of Breach of Contract, eliminates the requirement in §51.204(d) that a contract claim pending before August 30, 1999 be delivered by February 26, 2000. The provision is obsolete and no longer necessary.

The amendment to §51.300, concerning Definitions, eliminates the definition of "commercial customer information" in paragraph (2) and replaces it with "nonrecreational customer information" in paragraph (7). Provisions of Subchapter K address the handling of certain types of customer information. The reference to department customers who are not recreational customers as

"nonrecreational" customers is more accurate than "commercial customers."

The amendment to §51.303, concerning Disclosure of Information, replaces the term "commercial customer information" with "nonrecreational customer information" to conform the contents of the section to the terminology in §51.300 as adopted.

The amendment to §51.304, concerning Exceptions, alters subsection (b)(4)(D), which addresses the confidentiality of commercial customer and magazine subscriber information. Under the current rule, a commercial customer or Texas Parks and Wildlife Magazine subscriber may elect to exclude his or her customer information from disclosure or "opt out" of the disclosure provisions. The amendment eliminates the "opt out" mechanism; however, it continues to be the department's intent to follow magazine industry standards (such as the Audit Bureau of Circulation) regarding disclosure of magazine customer information. The amendment is intended to enhance transparency in the handling of agency information. The department notes that the amendment does not affect the confidentiality of information collected from purchasers of recreational licenses and permits or any other personal information that is required to be kept confidential by law.

The amendment to §51.601, concerning General Requirements, alters subsection (d) to remove the universal expiration date applicable to all department advisory committees. The department intends to establish or reauthorize advisory committees as necessary on a case-by-case basis within the regulation governing each specific department advisory committee establishing the expiration date of the advisory committee.

The repeal of §§51.621 - 51.624, 51.632, 51.643, 51.644, 51.661, 51.662, 51.673, and 51.674 will function to eliminate advisory groups that have expired and which the department has determined are no longer necessary.

The amendment to §51.3 will function by allowing department staff additional time to formulate recommendations in response to petitions for rulemaking and by creating accurate cross-references to other rules.

The amendment to §51.70 will function by clarifying and streamlining the department's process for accepting gifts.

The amendment to §51.71 will function by making internal references more accurate.

The amendment to §51.151 will function by establishing the conditions under which the executive director may approve certain types of inscriptions on state vehicles.

The amendment to §51.201 will function by removing potentially confusing references from the rule.

The amendment to §51.204 will function by eliminating obsolete provisions.

The amendment to §51.300 will function by creating a new definition for a term used in other rules in the subchapter.

The amendment to §51.303 will function by clarifying that the provisions of the subchapter apply to "nonrecreational customer information" rather than "commercial customer information."

The amendment to §51.304 will function by articulating the department's methods for release of customer information.

The amendment to §51.601 will function by removing the universal expiration date applicable to all department advisory committees.

The department received no comments concerning adoption of the proposed rules.

No groups or associations commented concerning adoption of the proposed rules.

SUBCHAPTER A. PROCEDURES FOR THE ADOPTION OF RULES

31 TAC §51.3

The amendments are adopted under Government Code, §2001.021, which requires each state agency to prescribe by rule the form for petitions for adoption of rules and the procedure for submission, consideration, and disposition of such petitions.

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 December 13, 2012.

TRD-201206443
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: January 2, 2013
Proposal publication date: October 5, 2012
For further information, please call: (512) 389-4775

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SUBCHAPTER C. EMPLOYEE FUNDRAISING AND SPONSORSHIPS

31 TAC §51.70, §51.71

The amendments are adopted under Parks and Wildlife Code, §11.0182, which requires the commission to adopt policies by rule to govern fund-raising activities by department employees on behalf of the department with respect to gifts of greater than $500.

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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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER F. VEHICLES

31 TAC §51.151

The amendment is adopted under Transportation Code, §721.003, which authorizes the department by rule to create exemptions from the applicability of the chapter with respect to uninscribed vehicles.

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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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER J. CONTRACT DISPUTE RESOLUTION

31 TAC §51.201, §51.204

The amendments are adopted under the authority of Government Code, §2260.052(c), which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of contract claims against the state, and Parks and Wildlife Code §11.0171, which requires the commission to adopt by rule policies and procedures for soliciting and awarding contracts.

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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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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SUBCHAPTER K. DISCLOSURE OF CUSTOMER INFORMATION

31 TAC §§51.300, 51.303, 51.304

The amendments are adopted under Parks and Wildlife Code, §11.030, which requires the commission to adopt policies by rule relating to the release of the customer information; the use of the customer information by the department; and the sale of a mailing list consisting of the names and addresses of persons who purchase customer products, licenses, or services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER O. ADVISORY COMMITTEES
DIVISION 1. GENERAL REQUIREMENTS

31 TAC §51.601

The amendment is adopted under Parks and Wildlife Code, §11.062, which authorizes the chairman of the commission to appoint committees to advise the commission on issues under its jurisdiction; and Government Code, Chapter 2110, which requires that rules be adopted regarding each state agency advisory committee.

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 3. COASTAL FISHERIES

31 TAC §§51.621 - 51.624

The repeals are adopted under Parks and Wildlife Code, §11.062, which authorizes the chairman of the commission to appoint committees to advise the Commission on issues under its jurisdiction; and Government Code, Chapter 2110, which requires that rules be adopted regarding each state agency advisory committee.

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 4. INLAND FISHERIES

31 TAC §51.632

The repeal is adopted under Parks and Wildlife Code, §11.062, which authorizes the chairman of the commission to appoint committees to advise the Commission on issues under its jurisdiction; and Government Code, Chapter 2110, which requires that rules be adopted regarding each state agency advisory committee.

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DIVISION 5. STATE PARKS

31 TAC §51.643, §51.644

The repeals are adopted under Parks and Wildlife Code, §11.062, which authorizes the chairman of the commission to appoint committees to advise the Commission on issues under its jurisdiction; and Government Code, Chapter 2110, which requires that rules be adopted regarding each state agency advisory committee.

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 7. COMMUNICATIONS

31 TAC §51.661, §51.662

The repeals are adopted under Parks and Wildlife Code, §11.062, which authorizes the chairman of the commission to appoint committees to advise the Commission on issues under its jurisdiction; and Government Code, Chapter 2110, which requires that rules be adopted regarding each state agency advisory committee.

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 8. COMMITTEES OF THE COMMISSION

31 TAC §51.673, §51.674

The repeals are adopted under Parks and Wildlife Code, §11.062, which authorizes the chairman of the commission to appoint committees to advise the Commission on issues under its jurisdiction; and Government Code, Chapter 2110, which requires that rules be adopted regarding each state agency advisory committee.

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 D. EDUCATION

31 TAC §51.81

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 8, 2012, adopted an amendment to §51.81, concerning Mandatory Boater Education, without changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7947).

In 1997, the 75th Texas Legislature enacted House Bill (H.B.) 966, which amended Parks and Wildlife Code, Chapter 31

(commonly referred to as the Texas Water Safety Act) by adding §31.109, which required all boat operators born after September 1, 1984 to successfully complete an approved boater education course before operating certain vessels (vessels powered by a motor of 10 horsepower or more, windblown vessels of over 14 feet in length, and personal watercraft) on public waters. H.B. 966 also amended the Water Safety Act by adding §31.110, which stipulated that a person is not required to comply with the mandatory boater education requirements of §31.109 if, among other things, that person is at least 18 years of age or was exempt by rule of the commission.

In 2009 the 81st Texas Legislature enacted H.B. 3108 which mandated the creation of an advisory panel to "study the current state of recreation safety on public waters in Texas and to make recommendations to the governor, the lieutenant governor, and the speaker of the house of representatives for improving safety." In 2010 the advisory panel submitted the required report. In this report, the panel found, among other things, that watercraft operator education will help to better prepare the operator to have a safe and successful experience on the water, that education will improve the safety of all passengers in the craft, and that with a more educated operator, passengers will be more directed to safety by the informed operator. The panel also recommended that the legislature "continue the current Texas mandatory program," but "remove the 18 years of age exemption" and "reset the born-on-date to September 1, 1993, which permits an ongoing phase-in corresponding to the current 17-year-old cap, and avoids significant state expenditures to catch up previously exempted age groups." In addition, the panel recommended that the legislature grant authority to the department to "establish an integrated temporary free deferral program for liveries, new boat sales, and dealer business purposes (show, demonstrate, and test)."

Following the submission of the interim report, the 82nd Texas Legislature in 2011 enacted H.B. 1395 which amended several provisions of the Water Safety Act. Section 31.109, as amended by H.B. 1395, provides that no person born on or after September 1, 1993 may operate a personal watercraft or motorboat powered by a motor of greater than 15 horsepower or a windblown vessel over 14 feet in length on public waters unless that person possesses evidence of successful completion of a boater education course approved by the department or "proof of completion of the requirements to obtain a vessel operator's license issued by the United States Coast Guard." H.B. 1395 also eliminated the exemption from the boater education requirements for persons who are at least 18 years of age. Persons born prior to September 1, 1993 (generally persons who are older than 19 year of age as of September 1, 2012) would not be subject to the boater education requirements of §31.110.

H.B. 1395 also amended Parks and Wildlife Code, §31.110, to list five situations in which a person who would otherwise be subject to the mandatory boater education requirement is not required to comply with the mandatory boater education requirements of §31.109. Two of the five situations in which a person is exempt from the boater education requirements apply only if authorized by a rule enacted by the Texas Parks and Wildlife Commission (the Commission). Specifically, a person may be exempt from the boater education requirements if that person is exempt by rule of the commission as a customer of a business engaged in renting, showing, demonstrating, or testing boats, or if that person is otherwise exempt by rule of the commission.

H.B. 1395 also amended §31.110 to require the department by rule to establish a boater education deferral program. The boater education deferral program must be available at no cost to boat dealers, manufacturers, and distributors. Therefore, the rule as adopted establishes a deferral program and a temporary exemption from the boater education requirements for persons who have obtained the boater education deferral, and provides an exemption for persons engaged in showing, testing, or demonstrating a boat, which will result in an exemption for boat dealers, manufacturers, and distributors.

The amendment establishes a one-time, 15-consecutive-day (from the day of purchase through midnight of the 15th day following purchase) deferral of the boater education requirements of Parks and Wildlife Code, §31.109, available for a fee of $10, to persons who are 18 years of age or older. The rulemaking to adopt the fee is published elsewhere in this issue of the *Texas Register.* The department intends to make the deferral available for purchase through the department's license sales system, which means that the deferral will be available at any of approximately 1,700 locations statewide. The deferral may also be purchased through the TPWD website (www.tpwd.state.tx.us) or by telephone during business hours or at any time via the department's website.

In developing the rule, the department considered that the word "deferral" means a delay or postponement, as opposed to an exemption. The panel recommendation also referenced a "temporary" deferral program. In addition, the department considered that the purpose of boater education is to make public waters safer for all persons who use them. On that basis, the amendment provides for a boater education deferral that is a one-time opportunity extending for a maximum of 15 days. The rule is designed to provide a deferral program while also preserving the public safety benefits of boater education.

The amendment makes the deferral available only to persons who are 18 years of age or older. The age requirement is intended to provide for a minimum level of maturity for persons who obtain the boater education deferral. A person who is 18 years of age is considered an adult for most purposes.

Additionally, the amendment prohibits a person who has purchased a boater-education deferral from supervising the operation of a vessel by another person. Under Parks and Wildlife Code, §31.110(2), a person who meets certain criteria may supervise another person who has not completed boater education. The department does not believe that a person who is required to complete boater education, but is authorized to operate a vessel as a result of the deferral, should be allowed to supervise another operator.

The amendment also provides an exception from the mandatory boater education requirement for persons on a vessel that is being shown, tested, or demonstrated under a dealer's, distributor's, or manufacturer's license. As noted above, Parks and Wildlife Code, §31.110(a)(4), provides that a person may be exempt from the boater education requirements if that person is exempt by rule of the commission as a customer of a business engaged in renting, showing, demonstrating, or testing boats. Under the rule as adopted, a person who is renting a boat would not be exempt from the boater education requirements, but would be able to purchase a deferral; however, a person who is a customer of a business engaged in showing, demonstrating, or testing boats would be exempt from the mandatory boater education requirements.

Parks and Wildlife Code, §31.041(d), provides for the use of the license of a boat dealer, distributor and/or manufacturer when showing, demonstrating or testing a boat. Since a customer of a business who is showing, testing or demonstrating a boat is generally under the supervision of a representative of the dealer, distributor or manufacturer, there are fewer safety concerns. Department boating accident records indicate that during the period from 2007 to the current time, approximately 1,414 vessels received "AA" registration. (Vessels being shown, tested, or demonstrated receive "AA" registration, which is valid for 15 days following the sale of a vessel by a dealer.) During that time, there were 12 accidents involving vessels with an "AA" registration. These 12 accidents resulted in 13 injuries and one fatality. The department has determined that because of the low accident rate, customers involved in the show, test, or demonstration of boats should therefore be exempt from boater education requirements while engaged in those activities.

The rule requires all persons other than those involved in the show, test, or demonstration of vessels to either complete the mandatory boater education course or obtain the one-time deferral. This includes persons who rent vessels from a vessel livery. The department has determined, based on water safety data, that to be consistent with the legislative directive to improve boating safety, it is necessary to require persons who rent vessels to either have obtained boater education certification or the one-time boater education deferral. There are 602,729 registered vessels in Texas, 940 of which are registered as livery (rental) vessels; therefore, rental vessels comprise .155% of all registered vessels in the state. Under 31 TAC §55.850, concerning Mandatory Boating Incident Report, a boating accident in Texas that results in injury, death, or damage to property exceeding $2,000 must be reported to the department. Department statistics indicate that during the period from 2007 to the current time, rented vessels were involved in 263 of 1,220 (22%) of reported boating accidents, 126 of 665 (19%) of reported accident-related injuries, and 11 of 225 (5%) of boating-accident fatalities. Department statistics for the last five years also indicate that out of 263 boating accidents involving rented vessels, only three (1%) involved operators who had completed a department-approved boating education class. Although Parks and Wildlife Code, §31.111, requires vessel liveries to provide some safety instruction to customers (to include the provisions of the Water Safety Act, the operational characteristics of the rented vessel, and boating regulations that apply in the area where the rented or leased vessel will be operated), the department concludes that requiring persons who rent vessels to either complete a department-approved boater education class or obtain the deferral will assist in achieving the goal of increased water safety. The 15-day duration of the boater education deferral covers the period of a standard two-week vacation and is also consistent with the time frame for a person to transfer the registration of a boat purchased from a dealer, distributor, or manufacturer.

The rule will function by creating a boater-education deferral option as required by H.B. 1395, enacted by the 82nd Texas Legislature.

The department received four comments opposing adoption of the proposed rule. All four commenters articulated specific reasons or rationales for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the boater-education course should be less than six hours in length. The department disagrees with the comment and responds that the rulemaking does not address the length of boater education courses. Therefore, the comment is not germane to the substance of the rulemaking, which establishes a boater-education deferral program. The department also notes, however, that there are several methods for obtaining the required boater education, including home study and passing a proctored equivalency exam. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should not be a boater-education deferral option available to boaters. The department disagrees with the comment and responds that the boater-education deferral program is required by statute. No changes were made as a result of the comment.

One commenter opposed adoption and stated that entities that operate boat-rentals should be exempt from the rule because of economic factors, and that the legislative intent of H.B. 1395 was to exempt persons engaging in boat rentals from participation in boater education deferral. The department disagrees with the comment and responds that the rule would apply to customers of boat-rental businesses, but does not directly regulate boat rental businesses. In addition, H.B. 1395's amendments to Parks and Wildlife Code, §31.110, authorized but did not require the department to exempt customers of boat rental businesses from the mandatory boater education requirements. After reviewing statistical information regarding accidents involving rented boats, considering the overall goal of improving boating safety, and the availability of boater education courses, the department determined that the one-time 14-day deferral contained in the amendment balances these considerations without unduly impacting recreational boating. No changes were made as a result of the comment.

One commenter opposed adoption and stated that statistics do not prove that boater education is effective and that the legislative intent of H.B. 1395 was to exempt persons engaging in boat rentals from participation in boater education deferral. The department disagrees with the comment and responds that boating accident statistics show that among persons who rent watercraft, the accident rate is higher for those who have not completed an approved boater education course. The department also responds that H.B. 1395's amendments to Parks and Wildlife Code, §31.110, authorized but did not require the department to exempt customers of boat rental businesses from the mandatory boater education requirements. No changes were made as a result of the comment.

The department received three comments supporting adoption of the rule as proposed.

The Boating Trades Association of Texas commented in support of adoption of the proposed rule.

No other groups or associations commented on the proposed rule.

The amendment is adopted under the authority of Parks and Wildlife Code, §11.027, which authorizes the commission to by rule establish and provide for the collection of a fee to cover costs associated with the review of an application for a permit required by the code, and §31.110, which requires the commission to establish a boater education deferral program by rule and allows the commission to exempt from the boater education requirement a customer of a business engaged in testing, showing, or demonstrating boats.

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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Ann Bright
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Texas Parks and Wildlife Department
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SUBCHAPTER P. OFFICIAL CORPORATE PARTNERS

31 TAC §51.701, §51.704

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 8, 2012, adopted amendments to §51.701 and §51.704, concerning Official Corporate Partners, without changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7950).

House Bill 1300 (H.B. 1300), enacted by the 82nd Texas Legislature, amended Parks and Wildlife Code, Chapter 11, by adding Subchapter J-1 to address the use of private contributions, partnerships, licensing and commercial advertising to provide additional funding for department programs, projects, and sites. Parks and Wildlife Code, §11.225, as added by H.B. 1300, requires the Texas Parks and Wildlife Commission (commission) to adopt rules to implement the provisions of Subchapter J-1, including rules that establish guidelines or best practices for official corporate partners.

Earlier this year, the commission adopted 31 TAC §§51.700 - 51.704 to implement H.B. 1300. The rules went into effect in May 2012. On July 24, 2012, in accordance with the rules, the department issued a Request for Proposals (RFP) to solicit proposals from commercial entities seeking to be designated as department-wide official corporate partners (OCP-Ds). The department notified more than 3,000 companies and publicized the issuance of the RFP through a press release and a number of interviews with various media outlets. The deadline for response to the RFP was August 30, 2012. In spite of the department's efforts to generate interest, the department received no proposals in response to the RFP.

However, the department continues to receive inquiries from commercial entities wishing to engage in joint promotions or other arrangements to provide much needed financial support to the department. Such support may involve the licensing of department brands or designation as an official corporate sponsor. Current §51.701 requires that the OCP-D designation be awarded through a competitive process. Similarly, current §51.704 requires that the opportunity to license department brands be awarded through a competitive process. To enable the department to take full advantage of potential opportunities, the department amends §51.701 and §51.704 to allow the department's executive director or designee to waive the competitive process requirement for the designation of an OCP-D and for the licensing of department brands when such waiver is determined to be in the best interest of the department.

The amendment to §51.701(a) provides that "except as otherwise provided" in the rules, OCP-Ds will be selected through a fair and competitive process. The amendment also authorizes the department's executive director to waive the competitive process requirement for designation of an OCP-D if such a waiver is determined to be in the best interest of the department. Although the department continues to believe that the OCP-D designation should be reserved for companies offering a significant financial benefit to the department, the absence of responses to the department's recent RFP suggests that a means other than a competitive RFP process may be a more appropriate means of selecting an OCP-D in some circumstances.

The amendment to §51.704(c) provides that "except as otherwise provided" in the rules, the department will use a competitive process to award the licensing rights for one or more department's brands. In addition, the amendment authorizes the department's executive director to waive the competitive process requirement for awarding licensing rights. Although the use of a competitive process may continue to be an appropriate mechanism for awarding the right to license department brands in some circumstances, the amendment provides additional flexibility when the award of licensing rights would be in the department's best interest.

The amendments will function by allowing the department to waive the competitive process requirement for designation of an OCP-D if such a waiver is determined to be in the best interest of the department.

The department received no comments concerning adoption of the proposed rules.

No groups or associations commented concerning adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, §11.225, as added by House Bill 1300, enacted by the 82nd Texas Legislature, Regular Session (2011), which requires the commission to adopt rules to implement the provisions of Parks and Wildlife Code, Chapter 11, Subchapter J-1, and under Parks and Wildlife Code, §13.303, as added by House Bill 1300, enacted by the 82nd Texas Legislature, Regular Session (2011), which requires the commission to adopt rules to prohibit inappropriate commercial advertising in state parks, natural areas, historic sites, or other sites under the jurisdiction of the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 53. FINANCE
SUBCHAPTER A. FEES
DIVISION 3. TRAINING AND CERTIFICATION FEES

31 TAC §53.50

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 8, 2012, adopted an amendment to §53.50, concerning Training and Certification Fees, without changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7951). The amendment establishes a fee of $10 for a one-time deferral of boater education course requirements.

Under Parks and Wildlife Code, §31.109, no person born on or after September 1, 1993 may operate a personal watercraft or motorboat powered by a motor of greater than 15 horsepower or a windblown vessel over 14 feet in length on public waters unless that person possesses evidence of successful completion of a boater education course approved by the department or "proof of completion of the requirements to obtain a vessel operator's license issued by the United States Coast Guard." Under the provisions of House Bill 1395, enacted by the 82nd Texas Legislature, Regular Session (2011), Parks and Wildlife Code, §31.110, was amended to require the department to establish a boater education deferral program by rule. The rulemaking to establish the boater education deferral program, published elsewhere in this issue of the *Texas Register,* would allow a person to purchase a deferral of boater education requirements. This amendment establishes the fee of $10 for the deferral. The department intends to make the deferral available for purchase through the department's license sales system, which means that a deferral could be purchased at any of approximately 1,700 locations statewide. The deferral will also be available through the TPWD website (www.tpwd.state.tx.us) and by telephone during business hours.

The amendment will function by establishing the fee amount for a boater-education deferral.

The department received no comments concerning adoption of the proposed amendment.

No groups or associations commented concerning adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §11.027, which authorizes the commission to by rule establish and provide for the collection of a fee to cover costs associated with the review of an application for a permit required by the code, and §31.110, which requires the commission to establish a boater education deferral program by rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Counsel
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CHAPTER 57. FISHERIES
SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION
DIVISION 1. GENERAL PROVISIONS

31 TAC §57.972

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 8, 2012, adopted an amendment to §57.972, concerning General Rules, without changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7953).

The amendment adds Lake Ray Roberts and Lake Lewisville to the list of water bodies where special regulations intended to control the spread of zebra mussels *(Dreissena polymorpha)* are in effect.

The zebra mussel is a small, non-native mussel originally found in Eurasia. It has spread throughout Europe, where it is considered to be a major environmental and industrial menace. The animal appeared in North America in the late 1980s and within ten years had colonized in all five Great Lakes and the Mississippi, Tennessee, Hudson, and Ohio river basins. Since then, they have spread to additional lakes and river systems.

Zebra mussels live and feed in many different aquatic habitats, breed prolifically, and cannot be controlled by natural predators. Adult zebra mussels colonize all types of living and non-living surfaces including boats, water-intake pipes, buoys, docks, piers, plants, and slow-moving animals such as native clams, crayfish, and turtles. The U.S. Fish and Wildlife Service has estimated the potential economic impact of zebra mussels to be in the billions of dollars.

Zebra mussels affect natural ecosystems both directly and indirectly. The greatest direct impact relates to the mussel's feeding behavior. Zebra mussels are filter feeders and each mussel can process up to one liter of water per day. During this process, particles in the water column are removed and either eaten by the mussels or coated in mucus and ejected. Unfortunately, the material removed from the water consists of other live animals and algae that supply food for larval fish and other invertebrates. In response to this changing food supply, indigenous populations of some animals decline and food webs are disturbed or eliminated. Once zebra mussels become established in a water body, they are impossible to eradicate with the technology available today.

What makes zebra mussels particularly difficult to control is that they have a free-floating, microscopic larval stage called a veliger. Because young zebra mussels are so small, they are spread easily by water currents and can drift for miles before settling. After settling, the mussels attach to hard objects and remain stationary as they grow. They often attach to objects involved in human activities, such as boats and boat trailers, and are inadvertently moved from one water body to another

by people. Any water collected from waterbodies where zebra mussels are present could contain veligers; thus, water transported from waterbodies with known zebra mussel populations is a vector for the spread of zebra mussels.

The department earlier this year amended §57.972 to implement special regulations to control the spread of zebra mussels from the Red River and Lake Lavon. The adoption notice was published in the May 11, 2012, issue of the *Texas Register* (37 TexReg 3602). Zebra mussels were confirmed in Lake Ray Roberts on July 17, 2012 and in the Elm Fork of the Trinity River upstream of Lake Lewisville on July 18, 2012. On July 30, 2012, the department filed an emergency rule to address the discovery of zebra mussels in Lake Ray Roberts and the Elm Fork of the Trinity River. The emergency rule added those water bodies to the applicability of existing rules to control the spread of zebra mussels. The amendment will supplant the emergency rule on a permanent basis.

Under ordinary circumstances, the department would consider any person in possession of zebra mussels (including veligers) to be in violation of Chapter 57, Subchapter A, which prohibits the possession of exotic aquatic shellfish, including zebra mussels. The amendment provides that the department will not consider a person in possession of veligers to be in violation of the exotic species rules, provided all live wells, bilges, and other receptacles or systems capable of retaining or holding water as a consequence of being immersed in a waterbody have been completely drained prior to the use of a public roadway. The amendment also provides that a person traveling on a public roadway via the most direct route to another access point located on the same body of water would not be required to drain or empty water.

The amendment will function by stipulating actions that may be taken by persons to avoid being in violation of exotic species regulations.

The department received two comments supporting adoption of the proposed amendment.

No groups or associations commented concerning adoption of the proposed amendment.

The amendment is adopted under Parks and Wildlife Code, §66.007, which prohibits the possession or placement into public waters of exotic fish or shellfish except as authorized by rule or permit issued by the department.

The amendment affects Parks and Wildlife Code, Chapter 66.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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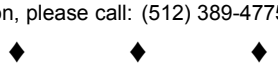

CHAPTER 61. DESIGN AND CONSTRUCTION
SUBCHAPTER A. CONTRACTS FOR PUBLIC WORKS

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 8, 2012, adopted the repeal of §§61.21 - 61.26 and new §61.21, concerning Contracts for Public Works. New §61.21 is adopted with changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7954). The repeals are adopted without change and will not be republished. The repeals and new rule are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The change to §61.21 eliminates the listing of possible contracting methodologies contained in the proposed rule and replaces it with a statement that the department shall solicit, evaluate, negotiate, select, and award contracts for construction projects by means of a fair and impartial method as authorized by applicable law. The change is intended to indicate that depending on the circumstances the department is not limited to a particular methodology for contracting construction projects, except as provided by law.

Under Parks and Wildlife Code, §11.0171, the executive director or executive director's designee may negotiate, contract, or enter an agreement relating to a project of the department, including professional services agreements relating to a department project, consistent with Subchapter A, Chapter 2254, Government Code (the Professional Services Procurement Act). Section 11.0171 also requires the commission to adopt by rule policies and procedures consistent with applicable state procurement practices for soliciting and awarding contracts.

In reviewing Chapter 61, Design and Construction, the department determined that the existing rules governing construction contracts do not reflect all of the options for modern construction contract award and management. In addition, the current rules contain provisions that are more appropriately addressed in solicitation documents, such as a request for proposals. Therefore, the existing rules are replaced with a single, flexible regulation that enables the department to deal effectively with the multiplicity of possible conditions and circumstances affecting the various construction projects undertaken by the department.

New §61.21(a) would require the department to solicit, evaluate, negotiate, select, and award contracts for construction projects by means of a fair and impartial method as authorized by applicable law.

New §61.21(b) would require the department to ensure that any method used to solicit, evaluate, select, and award a contract for construction results in the best value for the department. In addition to the obvious importance of ensuring that construction contracting occur in compliance with state law and by means of a fair and impartial process, the department believes it is important that the proposed regulation acknowledge that as a public agency, the department's goal in all cases is to make sure that the interest of the people of the state is served by striving to obtain the best value when contracting for construction.

The new rule will function by simplifying and streamlining the contracting process for construction projects undertaken by the department.

The department received one comment opposing adoption of the proposed rule. The commenter stated that the rule should contain a direct reference to Government Code, Chapter 2267 and eliminate references to "single source" and "including but not limited to." The department disagrees that a direct reference to Government Code, Chapter 2267 is necessary, but agrees that a more general statement concerning department contracting processes will address the commenter's concerns without affecting the goal of the department in promulgating the rule. Changes have been made accordingly.

The department received four comments supporting adoption of the rule.

The Associated General Contractors of Texas (AGC) commented in opposition to adoption of the proposed rule. However, the AGC approved of the change made by the department to address the AGC's concerns.

No other groups or associations commented concerning adoption of the proposed rule.

31 TAC §§61.21 - 61.26

The repeals are adopted under the authority of Parks and Wildlife Code, §11.0171, which requires the commission to adopt by rule policies and procedures consistent with applicable state procurement practices for soliciting and awarding contracts.

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 December 13, 2012.

TRD-201206458
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: January 2, 2013
Proposal publication date: October 5, 2012
For further information, please call: (512) 389-4775

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31 TAC §61.21

The new rule is adopted under the authority of Parks and Wildlife Code, §11.0171, which requires the commission to adopt by rule policies and procedures consistent with applicable state procurement practices for soliciting and awarding contracts.

§61.21. Contracts for Public Works.

(a) The department shall solicit, evaluate, negotiate, select, and award contracts for construction projects by means of a fair and impartial method as authorized by applicable law.

(b) The department shall ensure that any method used to solicit, evaluate, select, and award a contract for construction results in the best value for the department.

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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General Counsel
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For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE
SUBCHAPTER B. DISEASE DETECTION AND RESPONSE
DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §§65.80 - 65.88

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 8, 2012, adopted new §§65.80 - 65.88, concerning Chronic Wasting Disease. New §65.82, concerning High Risk Zones; Restrictions, is adopted with changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7955). Sections 65.80, 65.81, and 65.83 - 65.88 are adopted without changes and will not be republished.

The change to §65.82 corrects an inaccuracy in the boundary description of HRZ 1. As published, the boundary description did not match the map supplied as a graphic.

The new rules constitute new Subchapter B, concerning Disease Detection and Response, within Chapter 65. On July 10, 2012, the department confirmed the first known cases of wildlife infected with Chronic Wasting Disease (CWD) in Texas. Texas therefore joins 22 other states and two Canadian provinces where CWD has been detected in free-ranging or captive cervids or cervid environments. The new rules are a result of cooperation between the department and the Texas Animal Health Commission (TAHC) to protect susceptible species of exotic and native wildlife from CWD. TAHC is the state agency charged with disease management in livestock and exotic species. The TAHC rules regarding the establishment of containment zones (CZs) and high-risk zones (HRZs) to address CWD management in livestock and exotic species were adopted in September and published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 8011). Additional TAHC regulations regarding CWD management with respect to herd status plans and disease testing have been proposed, appearing in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8130).

In general, to minimize the risk of CWD expanding beyond the area(s) in which it currently exists, the department's new rules: (1) define geographic areas the department has determined, using the best available science and data, where the detection of CWD in Texas has occurred or is probable (Containment Zones), where the presence of CWD could reasonably be expected (High Risk Zones), and where there is an elevated probability of discovering CWD (Buffer Zones; BZ); (2) increase disease monitoring requirements and/or restrict activities conducted under any permits authorizing the capture, release, or possession of live cervid species (cervids are a family of animals including deer, elk, moose, and caribou) regulated by the department (white-

tailed deer and mule deer) in a CZ, HRZ, or BZ; and (3) authorize the department's executive director to declare other geographic areas that meet the regulatory definition as a CZ, HRZ, or BZ.

CWD is a fatal neurodegenerative disorder that affects cervid species such as white-tailed deer, mule deer, elk, red deer, sika, and others (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep) and Bovine Spongiform Encephalopathy (BSE, found in cattle and commonly known as Mad Cow Disease). Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. What is known is that CWD is invariably fatal and is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease in wild populations correlates with significant deer population declines and there is evidence that hunters tend to avoid areas of high CWD prevalence. The implications of CWD for Texas and its multi-billion dollar ranching, hunting, and wildlife management economies are significant.

The department has been concerned for over a decade about the possible emergence of CWD in wild and captive deer populations in Texas. Since 2002, more than 26,500 "not detected" CWD test results were obtained from "free ranging" deer in Texas. Additionally, deer breeders have submitted more than 7,400 "not detected" test results to the department. The department closed the Texas border in 2005 to the entry of out-of-state captive white-tailed and mule deer and has increased regulatory requirements regarding disease monitoring and recordkeeping (31 TAC §65.604). (In 2010, TPWD clarified that the border closure was also to prevent the spread of other diseases, including bluetongue virus, Epizootic Hemorrhagic Disease Virus, Malignant Catarrhal Fever, and Adenovirus Hemorrhagic Disease (January 8, 2010, issue, 35 TexReg 252).)

In February of 2012, the department's concern about the emergence of CWD in Texas escalated when the New Mexico Game and Fish Department notified the department that CWD had been detected in three mule deer taken by hunters in the Hueco Mountains within two miles of the Texas border. Mule deer movements in the Trans Pecos area of Texas can be 25-30 linear miles or more for an individual animal, creating the possibility that the CWD-positive mule deer reported by New Mexico may have been in Texas or had contact with mule deer now in Texas. Therefore, the department and TAHC reconstituted the CWD Task Force, comprised of wildlife-health professionals and cervid producers.

Concurrent with the reconstitution of the CWD Task Force, the department, with the assistance and cooperation of landowners and other governmental entities, including TAHC, increased CWD surveillance and detection efforts, including the collection of 31 mule deer samples along the Texas side of the New Mexico border. On July 10, 2012, the department confirmed that two mule deer taken in the Texas portion of the Hueco Mountains tested positive for CWD.

As a result of the discovery of CWD in the Hueco Mountains of New Mexico and Texas, the CWD Task Force recommended that the department take specific actions, including the designation of a CZ, HRZ, and BZ surrounding the geographical points where CWD has been detected or where the elevated probability of discovering CWD exists, requiring increased disease monitoring, and the restriction of department-permitted deer-management practices within those zones.

Under Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, and R-1, the department regulates the possession of white-tailed deer and mule deer for various purposes by permit. Subchapter C governs permits for scientific research, zoological collection, rehabilitation and educational display of protected wildlife which may include deer. Subchapter E governs Triple T activities (trap, transport and transplant), in which game animals or game birds are captured and relocated to adjust populations, and other, similar, programs such as Urban White-tailed Deer Removal Permits and Permits to Trap, Transport, and Process Surplus White-tailed Deer. The permits issued under authority of Subchapter E are collectively referred to as "Triple T" permits. Subchapter L governs Deer Breeder Permit (DBP) activities, which include, among other things, retention of captive-raised deer within a facility for breeding purposes and release of such deer into the wild. Subchapters R and R-1 govern Deer Management Permit (DMP) activities for white-tailed deer and mule deer, respectively, in which free-ranging deer may be captured and temporarily retained for breeding purposes. (The department notes that although DMPs for mule deer were authorized by the legislature in 2011, no DMPs for mule deer have been issued because the department has deferred promulgation of regulations pending acquisition of requisite data to develop biologically defensible rules and address disease threats, including CWD.)

Triple T permits, DBPs, and DMPs authorize release of deer under certain circumstances following some period of confinement, and the regulations governing Triple Ts and DBPs contain requirements for disease monitoring that must be met before deer can be acquired, transported, or released. Additionally, Parks and Wildlife Code, Chapter 43, Subchapter C, governs the issuance of permits for scientific research, zoological collection, rehabilitation, and educational display of protected wildlife (including cervids), any of which can include permit conditions for release.

From an epidemiological point of view, the higher the density of susceptible organisms, the more likely disease transmission is to occur. Obviously, deer kept in circumstances (facilities, pens, trailers, etc.) in which densities are many times higher than what occurs naturally are more likely to both manifest and spread communicable diseases at a higher rate or in greater numbers than would occur in a free-ranging population. Therefore, the new rules are designed and intended to provide reasonable assurance that once CWD is detected it is quickly isolated and not spread as a result of increased concentration of deer or the movement of live deer under permits issued by the department.

New §65.80, concerning Definitions, sets forth the meanings of words and terms used in the subchapter, which is necessary to ensure that specialized terms are unambiguously defined for purposes of compliance and enforcement.

New §65.80(1) defines the term "adult deer." The testing requirements set forth in new §65.83, concerning Buffer Zone (BZ), condition the department's approval of a permit to trap deer within a BZ on the submission of "not detected" results of CWD tests. Similarly, under new §65.82 and §65.83, certain activities under a DBP require the permittee to comply with certain disease testing requirements. Current CWD testing is most accurate in deer older than 16 months of age. Therefore, for ease of reference, the term "adult deer" is defined as deer older than 16 months of

age. The term "adult deer" is also used in the definition of "eligible mortality" in §65.80(4).

New §65.80(2) would define the term "buffer zone" or "BZ" as a "department-defined geographic area in this state adjoining or surrounding an HRZ (high risk zone), within which the department, using the best available science and data, has determined that an elevated probability of discovering CWD exists." The department has determined that the most efficacious response to either the detection of CWD or a heightened expectation of detection of CWD would be the creation of a three-tiered geographical area around the detection site (the specific geographical location where CWD is detected). The area immediately surrounding or in closest proximity to the detection site would be a "containment zone (CZ)," within which the department would restrict the movement and release of susceptible species held under permits administered by the department. The CZ would be surrounded by an HRZ, within which movement requirements would be less restricted. The HRZ, in turn, would be adjoined by the BZ, within which deer movement under department permits would be allowed to take place under monitoring requirements not as stringent as those within an HRZ but more stringent than the normal regulatory requirements. The extent of a BZ represents an epidemiological assessment of the possibility of CWD emergence in areas where there is not an immediate concern but, given the biological parameters of susceptible species (to include both natural movement and movement as a result of permit activities), there is not sufficient confidence to believe there is not an elevated concern. As explained in the discussion of new §§65.81 - 65.84, the new rules establish an initial CZ, HRZ, and BZ and authorize the department's executive director to establish additional CZs, HRZs, or BZs and modify existing zones.

New §65.80(3) defines "Containment Zone" as a "department-defined geographic area in this state within which CWD has been detected or the department has determined, using the best available science and data, CWD detection is probable." The extent of a CZ is determined by considering the best available science and data, including the behavior and life history of the particular susceptible species, geography, travel corridors, population parameters, and CWD testing history in that area. For example, as noted previously, CWD was detected in New Mexico in February 2012, just across the Texas-New Mexico border. Since CWD-infected mule deer were known to exist in the Hueco Mountains in New Mexico, there was more than strong scientific possibility that CWD-infected mule deer were present in Texas because the Hueco Mountains straddle the Texas-New Mexico border and desert mule deer can move as much as 25-30 linear miles. The department notes that any future CZ, HRZ, or BZ created in response to a "detected" CWD test result in Texas would be based on the best available science and data, correlated to the particular susceptible species infected, which could be white-tailed deer, whose behavior and life history are different than mule deer.

New §65.80(4) defines "eligible mortality" as "any lawfully possessed adult deer that has died." As noted previously, an "adult deer" is defined as a deer older than 16 months of age. Under the provisions of new §65.82 and §65.83, the department will condition the acquisition, movement, transfer, or release of deer under a DBP by requiring the permittee to comply with certain disease testing requirements and results. Because of the long incubation period of the CWD infectious agent, deer in a DBP facility must be monitored for an extended period of time to determine if CWD is present. For the same reason, there is a low probability that CWD will be detected in deer of less than 16 months in age, even though such deer could be infected. Therefore, the department's disease testing requirements for DBP facilities require that only adult deer mortalities be tested.

New §65.80(5) defines the term "High Risk Zone" as a "department-defined geographic area in this state surrounding or adjacent to a CZ, within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected." As noted earlier in the discussion of new §65.80(2) regarding the definition of "buffer zone" and §65.80(3) regarding the definition of "containment zone," the department has determined that the most efficacious response to either the detection of CWD or a heightened expectation of detection of CWD would be the creation of a three-tiered geographical area around the detection site or area of heightened expectation of discovery. The area immediately surrounding the detection site would be a "containment zone," which would in turn be contiguous with a "high risk zone," within which the department would restrict the movement and release of susceptible species held under permits administered by the department. In the same fashion as used in the determination of a CZ, the department would determine the extent of an HRZ by using the best science and data available, correlated to the particular susceptible species.

New §65.80(6) defines "susceptible species" as "any species of wildlife resource that is susceptible to CWD." The definition is necessary to provide a convenient term for ease of reference, rather than repeating the list of susceptible species throughout the rules. As noted previously, known susceptible species include white-tailed deer, mule deer, elk, sika and others.

New §65.81, concerning Containment Zones; Restrictions, establishes the geographical boundaries of the initial CZ and articulates the specific restrictions on permit holders within a CZ. New §65.81(1) creates an initial CZ in portions of Culberson, El Paso, and Hudspeth counties in West Texas (where CWD has been discovered and additional CWD detection is probable). Additional CZs may be added elsewhere in the state if necessary, and existing CZs may be modified.

New §65.81(2) sets forth the restrictions that apply within the CZ to holders of permits issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, and R-1.

New §65.81(2)(A) prohibits any person from conducting any activity involving the movement of a susceptible species under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, or R-1 within a CZ. For instance, Triple T permits authorize the trapping of deer for transplantation elsewhere. In a CZ, where the probability of CWD is highest, allowing the trapping and movement of deer to other areas of the state could result in the spread of CWD. Similarly, allowing the release of Triple T deer or rehabilitated deer or allowing the concentration of wild deer in close confinement as a result of DMP activities also carries elevated risks.

New §65.81(2)(B) stipulates that if the department receives an application for a DBP for a new facility that is to be located within an area designated as a CZ, the department will issue the permit but will not authorize the possession of deer within the facility so long as the CZ designation exists. Parks and Wildlife Code, §43.352, requires the department to issue a DBP to an applicant who meets the statutory and regulatory requirements for permit issuance; however, the commission's rulemaking authority under Parks and Wildlife Code, §43.357(b), authorizes the promulgation of rules governing the possession of breeder deer. The

department recognizes that the likelihood that a person will desire to locate a new DBP facility in an area where CWD has been confirmed is remote; however, the possibility must be addressed. CWD is transmitted not only by direct contact but also indirectly through environmental contamination. Thus, the area within a CZ must itself be treated as if it were a vehicle for transmission of CWD. It follows that if a deer breeder facility were to be built in a CZ, any deer introduced into the facility would become potential reservoirs for CWD, a situation that should be avoided.

New §65.81(2)(C) prohibits the recapture of breeder deer that escape from a DBP facility located within a CZ. Under current rule (31 TAC §65.602) a DBP holder may recapture deer that have escaped from a DBP facility. However, within a CZ the possibility that an escaped deer could come into contact with CWD-infected deer or contaminated environmental media is probable. An escaped deer that is recaptured and returned to a DBP facility could transmit CWD to deer within the DBP facility, making the DBP facility a CWD reservoir; therefore, the department has determined that it is prudent to prohibit the recapture of escaped breeder deer with a CZ.

New §65.82, concerning High Risk Zones; Restrictions, establishes the geographical boundaries of the initial HRZ and articulates the specific requirements regarding activities of permit holders within an HRZ. New §65.82(1) creates an initial HRZ in portions of Culberson, Hudspeth, Jeff Davis, and Reeves counties. The HRZ created by the new section comprises an area that surrounds the CZ. The department, using the best available science and data, has determined that the presence of CWD could reasonably be expected within the HRZ. The new rule also provides that HRZs may be added to or modified as necessary.

New §65.82(2) sets forth the restrictions that apply within the HRZ to holders of permits issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, and R-1. Following the recommendation of the CWD Task Force and in concurrence with the TAHC, new §65.82(2)(A) would prohibit any activity involving movement of a susceptible species under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1 within an HRZ, except as provided in subparagraph (B), which addresses DBPs specifically. The reasons for this restriction are as set forth in the discussion of new §65.81(2)(A). Except for certain activities conducted pursuant to a DBP (described in §65.82(2)(B)), the restrictions in the HRZ are the same as those in the CZ regarding the permits issued pursuant to Chapter 43, Subchapter C, E, L, R, or R-1.

With respect to DBP activities in the HRZ, new §65.82(2)(B)(i) prohibits any person from introducing, removing, authorizing the introduction or removal, or causing the introduction or removal of a live breeder deer into or from a facility permitted under Parks and Wildlife Code, Chapter 43, Subchapter L, that is located within an HRZ unless the facility has a record of test results of "not detected" for all eligible mortalities within the facility in the immediately preceding five-year period, the facility holds at least a Level C herd status with the TAHC, and the department has confirmed that the herd inventory maintained by the department is accurate. As noted earlier in the discussion of CZs, allowing deer held under a DBP at a facility within an HRZ to be moved outside of the HRZ creates a potential for spreading CWD. However, the department recognizes that a DBP facility that has tested 100% of eligible mortalities with results of "not detected," has achieved a Level C status from TAHC, and for which the department is able to verify the physical presence of each animal recorded on the inventory is, from an epidemiological point of view, not a likely reservoir for CWD. TAHC designates Level C status for herds that have a minimum of four years of test results indicating the absence of CWD, which is less stringent than the standard established in proposed new §65.82(2)(B)(i), which requires five years of test results, but requires an inventory verification to be performed annually by an accredited veterinarian and stipulates that additions of animals from lower herd-certification statuses cause an equivalent lowering for the receiving herd. Therefore, the effect of the new provisions is to ensure that for a deer to be moved from a DBP facility within an HRZ, the department will have sufficient confidence that no deer within the facility have been infected with CWD. Such facilities would therefore be authorized to conduct normal activities under the DBP except for transport of a deer to a location other than a permitted deer breeder facility, which essentially prohibits the liberation from a deer breeder facility to the wild within the HRZ. New §65.82(2)(C) expressly prohibits the liberation of deer held under any permit into the wild within an HRZ, which is necessary to avoid creating additional disease reservoirs.

New §65.82(2)(D) prohibits the recapture of breeder deer that escape from a DBP facility located within an HRZ. Under current rule (31 TAC §65.602) a DBP holder may recapture deer that have escaped from a DBP facility. However, within an HRZ there is the possibility that an escaped deer could come into contact with CWD-infected cervids or contaminated environmental media, which could then be transmitted to deer within the DBP facility and possibly to other DBP facilities (as deer are transferred among deer breeders); therefore, the department has determined that it is prudent to prohibit the recapture of escaped breeder deer within an HRZ.

New §65.83, concerning Buffer Zones (BZs), establishes the geographical boundaries of BZs and articulates the specific requirements regarding activities of permit holders within the BZ. The new section creates an initial BZ in the area of West Texas where an elevated but not immediate concern regarding the discovery of CWD exists. Specifically, the proposed initial BZ would include all of Jeff Davis, Crane, Ward, Loving, Winkler, Ector, Andrews, Gaines, Yoakum, Cochran, and Bailey counties and portions of Presidio, Brewster, Pecos, Reeves, Parmer, Midland, Upton, Martin, Dawson, Terry, Hockley, Lamb, and Castro counties. The new rule also allows for the creation of additional BZs, if necessary, and for the modification of existing BZs. New §65.83(2) sets forth the restrictions that apply within the BZ to holders of permits issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, and R-1. Following the recommendation of the CWD Task Force and in concurrence with the TAHC, new §65.83(2)(A) prohibits the introduction or removal of a live susceptible species from a deer breeder facility permitted under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L, that is located in a BZ unless the facility is "movement qualified" under the provisions of §65.604 of this title (relating to Disease Monitoring); CWD test results of "not detected" have been returned from an accredited test facility on at least 50% of all eligible mortalities that occurred within the facility on or after January 1, 2013; zero CWD test results of "detected" have been returned from an accredited test facility; and the department has confirmed that the herd inventory record maintained by the department is accurate.

As noted earlier in the discussion of HRZs, allowing deer held under a DBP at a facility within an HRZ to be moved outside of the HRZ creates a potential for spreading CWD. A similar, though reduced, concern exists for deer held in a DBP facility in a BZ. However, the department recognizes that a DBP facility that is

"movement qualified," has tested 50% of eligible mortalities with results of "not detected" and no results of "detected," and within which the department is able to verify the physical presence of each animal recorded on the inventory, is, from an epidemiological point of view, not a likely reservoir for CWD. The requirement set forth in new paragraph (2)(A)(ii) that establishes a date certain (January 1, 2013) for test histories is necessary to avoid the inadvertent creation of a differential standard for disease testing.

New §65.83(2)(B) authorizes the trapping of susceptible species within a BZ, provided a minimum of 30 test results of "not detected" and no "detected" results have been returned from an accredited test facility for adult deer of the species to be trapped, obtained from the trap site. Under current rules governing Triple T (31 TAC §65.102), a sample size equivalent to 10% of the number of deer to be transported (which may not be less than 10 nor more than 40 animals) must be tested for CWD with results of "not detected" in order to trap and move deer. Because the BZ is an area in which the department believes there is an elevated possibility of CWD discovery but CWD testing is not as robust, the department recommended that the sample size should be three times greater than the minimum sample currently required by current rule. The CWD Task Force also advised that current CWD testing requirements are inadequate to provide enough confidence that CWD does not exist in a population where deer may be trapped in the BZ; therefore, the proposal increases the minimum sample size within the BZ.

New §65.83(2)(C) clarifies that the department will regulate activities involving susceptible species under permits issued under Parks and Wildlife Code, Chapter 43, Subchapter C (scientific collection, educational display, zoological, rehabilitation) by stipulating disease-control parameters as a condition of the permit.

New §65.84, concerning Powers and Duties of the Executive Director, sets forth the obligations and limitations of the executive director with respect to the subchapter.

Figure: 31 TAC Chapter 65--Preamble

New §65.84(a) authorizes the executive director to designate any geographic area of this state meeting the definition of a CZ, HRZ, or BZ as a CZ, HRZ, or BZ. The new provision is intended to provide the department with a method of responding quickly to scientific information indicating that CWD is present, expected to be found, or there is an elevated possibility of detection. Being able to immediately impose movement and release restrictions is critical to preventing the spread of CWD. New §65.84(b) requires the executive director to notify the presiding officer of the commission prior to taking any action under the provisions of new subsection (a). New subsection (c) sets forth public notice provisions, which is necessary because of the importance of letting landowners, hunters, permit holders, and other interested or affected persons know about department actions that might affect them. New subsection (d) establishes that designations of CZs, HRZs, and BZs are effective immediately and applicable to all permits issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, and R-1. In order to provide the greatest possible protection to native wildlife, it is imperative that the department be able to act immediately to isolate CWD and prevent it from being spread by any department-permitted activity. New subsection (e) requires the department to initiate rulemaking to adopt all CZs, HRZs, and BZs by rule as soon as practicable. Although the department believes that being able to make CZs, HRZs, and BZs immediately effective is crucial to being able to contain CWD, it also believes that there should be an additional rulemaking process following the provisions of the Administrative Procedure Act to add CZs, HRZs, and BZs to the department's codified rules.

New §65.85, concerning Mandatory Check Stations, sets forth requirements for the presentation of susceptible species harvested by hunters within a CZ, HRZ, or BZ to the department for CWD testing. Following the recommendation of the CWD Task Force and with the concurrence of the TAHC, the department has determined that a key component of the CWD management and response strategy is a maximized surveillance effort in areas of the state where CWD has been confirmed, is suspected to exist, or there is an elevated likelihood that it could be found. Therefore, in addition to the testing regime for persons in possession of susceptible species under department permits and sampling efforts undertaken by the department and other entities, the department will establish check stations for the purpose of testing hunter-harvested susceptible species. Although under current rule (31 TAC §65.33) the department may establish mandatory check stations, the inclusion of specific check station requirements in this subchapter is prudent in order to have all regulations regarding CWD detection and management in one place for ease of reference and to reduce confusion for purposes of compliance and enforcement. In addition, certain additional requirements relating the check stations are necessary to address matters specific to CWD. Within a CZ, HRZ, or BZ where check stations have been established, the new rule requires the intact, unfrozen head of any susceptible species to be presented to a designated check station within 24 hours of take by the person or representative of the person who killed the susceptible species. The new rule also provides that the department will issue documentation for each specimen presented at the check station and requires that the documentation remain with the specimen until the specimen reaches the possessor's final destination. The new rule also reiterates that failure to comply is an offense.

New §65.86, concerning Preemption, provides that to the extent that a provision of the new subchapter conflicts with a provision of another subchapter of in Chapter 65, the provisions of Subchapter B would control. The new section is necessary to eliminate potential regulatory confusion.

New 65.87, concerning Exception, allows the waiver of any provision of the new subchapter as necessary for the holder of a scientific research permit issued under Parks and Wildlife Code, Chapter 43, Subchapter C when the proposed research is determined to be of use in advancing an understanding of CWD with respect to susceptible species. The department considers that CWD is of interest to the scientific community, and that scientific research proposals concerning the investigation of CWD could be received. Therefore, the new rules accommodate that possibility.

New §65.88, concerning Penalties, states the statutory penalties for violations of the new rules for ease of reference.

The department received three comments opposing adoption of the proposed new rules. Of the three commenters, two provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the department is determined to find CWD in Texas and that anthrax has killed many more deer than CWD. The commenter also stated that the department places undue hardship on deer breeders and that department management practices are antiquated and unable to produce the results that modern hunters demand. The department agrees with the comment that the department is de-

termined to find CWD if it exists in Texas, which is prudent and responsible from a wildlife management perspective. The department disagrees that anthrax and CWD present identical, or even similar, issues with respect to disease management in wildlife species, and that the department is any more or less demanding than is necessary with respect to regulation of deer breeders. As noted elsewhere in this preamble, the new rules are based on the best available science and were developed in close consultation with animal health experts at the TAHC and the CWD Task Force, comprised of wildlife-health professionals and cervid producers. The department is committed to protecting the health and viability of native wildlife under its statutory authority and believes that this provides the best outcomes for those resources and the people who enjoy them. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the decision to declare a CZ, HRZ, or BZ should not be left to the executive director alone. The department disagrees that the rules as adopted delegate exclusive authority to determine CZs, HRZs, or BZs to the executive director. It is imperative for the department to react immediately when CWD is detected or the department believes detection is likely. The rules therefore authorize the executive director to make such designations; however, they also require any such designation to be made using the best science and data available, and for the department to follow such designations with normal rulemaking procedures (which include public notice and comment submitted to the Parks and Wildlife Commission) to establish zones within the Texas Administrative Code. It should also be noted that the new provisions are consistent with Parks and Wildlife Code §12.027 which authorizes the executive director to enact emergency rules if "the executive director finds that there is an immediate danger to a species authorized to be regulated by the department. " No changes were made as a result of the comment.

The department received eight comments supporting adoption of the proposed new rules.

The Texas Chapter of the Wildlife Society commented in support of adoption of the proposed rules.

No other groups or associations commented concerning adoption of the proposed rules.

The new rules are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although as noted previously, the department has not yet established the DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

§65.82. High Risk Zones; Restrictions.

The areas described in paragraph (1) of this section are HRZs.

(1) High Risk Zones.

(A) High-Risk Zone 1: That portion of the state lying within a line beginning in Reeves County where the Pecos River enters from New Mexico; thence southeast along the Pecos River to Interstate Highway (I.H.) 20; thence west along I.H. 20 to I.H. 10; thence west along I.H. 10 to the Culberson County line; thence southwest along the Culberson County line to the Rio Grande; thence northwest along the Rio Grande to F.M. 192 in Hudspeth County; thence northeast along F.M. 192 to S.H. 20; thence southeast along S.H. 20 to I.H. 10; thence east along I.H. 10 to S.H. 54 in Hudspeth County; thence north along S.H. 54 to U.S. 62-180; thence northwest along U.S. 62-180 to the Texas-New Mexico border.

(B) Existing HRZs may be modified and additional HRZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) Restrictions.

(A) Except as provided in §65.87 of this title (relating to Exception) and subparagraph (B) of this paragraph, no person within an HRZ may conduct, authorize or cause any activity involving the movement of a susceptible species, into, out of, or within an HRZ under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1. Such prohibited activity, includes, but is not limited to transportation, introduction, removal, authorizing the transportation, introduction or removal, or causing the transportation, introduction or removal of a live susceptible species into, out of, or within an HRZ.

(B) No person shall:

(i) introduce, remove, authorize the introduction or removal, or cause the introduction or removal of a live susceptible species into or from a deer breeder facility permitted under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L, that is located in a HRZ unless:

(I) CWD test results of "not detected" have been returned from an accredited test facility on all eligible mortalities that occurred within the facility within the preceding five-year period;

(II) the facility has obtained Level "C" status as defined by 4 TAC §40.3 (relating to Herd Status Plans for Cervidae); and

(III) the department has confirmed that the herd inventory record maintained by the department is accurate; or

(ii) transport, authorize the transport, or cause the transport of a susceptible species into a HRZ unless:

(I) the requirements of clause (i)(I) - (III) of this subparagraph have been met; and

(II) the susceptible species are transported to a deer breeder facility permitted under Parks and Wildlife Code, Chapter 43, Subchapter L.

(C) No person shall liberate a susceptible species within an HRZ.

(D) Deer that escape from deer breeder facility within a HRZ may not be recaptured.

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 December 13, 2012.

TRD-201206460
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: January 2, 2013
Proposal publication date: October 5, 2012
For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 356. GROUNDWATER MANAGEMENT

The Texas Water Development Board (TWDB) adopts the repeal of Chapter 356, Subchapter A, §§356.1 - 356.12; Subchapter B, §§356.21 - 356.23; Subchapter C, §§356.31 - 356.35; and Subchapter D, §§356.41 - 356.46, concerning groundwater management. The repeal is adopted without changes to the proposal as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7965).

DISCUSSION OF THE ADOPTED REPEAL

This chapter is adopted for repeal because a new Chapter 356 is adopted elsewhere in this issue of the *Texas Register.* The board has determined that due to the extensive reorganization of new Chapter 356, repeal of the entire chapter is more efficient than amending the chapter. The revision of Chapter 356 results from statutory changes by the 82nd Legislature in 2011.

PUBLIC COMMENTS

No public comments were received on the proposed repeal of Chapter 356.

SUBCHAPTER A. GROUNDWATER MANAGEMENT PLAN APPROVAL

31 TAC §§356.1 - 356.12

STATUTORY AUTHORITY

The repeal is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State.

This adoption affects Texas Water Code, Chapter 36.

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 December 11, 2012.

TRD-201206376
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: December 31, 2012
Proposal publication date: October 5, 2012
For further information, please call: (512) 463-8061

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SUBCHAPTER B. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS

31 TAC §§356.21 - 356.23

STATUTORY AUTHORITY

The repeal is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State.

This adoption affects Texas Water Code, Chapter 36.

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 December 11, 2012.

TRD-201206377
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: December 31, 2012
Proposal publication date: October 5, 2012
For further information, please call: (512) 463-8061

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SUBCHAPTER C. SUBMITTAL OF DESIRED FUTURE CONDITIONS

31 TAC §§356.31 - 356.35

STATUTORY AUTHORITY

The repeal is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State.

This adoption affects Texas Water Code, Chapter 36.

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 December 11, 2012.

TRD-201206378

Kenneth L. Petersen
General Counsel
Texas Water Development Board
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Proposal publication date: October 5, 2012
For further information, please call: (512) 463-8061

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SUBCHAPTER D. APPEALING APPROVAL OF DESIRED FUTURE CONDITIONS

31 TAC §§356.41 - 356.46

STATUTORY AUTHORITY

The repeal is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State.

This adoption affects Texas Water Code, Chapter 36.

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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Kenneth L. Petersen
General Counsel
Texas Water Development Board
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Proposal publication date: October 5, 2012
For further information, please call: (512) 463-8061

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CHAPTER 356. GROUNDWATER MANAGEMENT

The Texas Water Development Board (TWDB) adopts new Chapter 356, Subchapter A, §356.10; Subchapter B, §§356.20 - 356.22; Subchapter C, §§356.30 - 356.35; Subchapter D, §§356.40 - 356.46; Subchapter E, §§356.50 - 356.57; and Subchapter F, §§356.60 - 356.62, concerning groundwater management. Sections 356.10, 356.31, 356.32, 356.35, 356.40 - 356.43, 356.51 and 356.53 are adopted with changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7967). Sections 356.20 - 356.22, 356.30, 356.33, 356.34, 356.44 - 356.46, 356.50, 356.52, 356.54 - 356.57 and 356.60 - 356.62 are adopted without changes and will not be republished.

DISCUSSION OF THE ADOPTED NEW CHAPTER

The adopted new chapter replaces current Chapter 356 in its entirety. Current Chapter 356 is adopted for repeal elsewhere in this issue of the *Texas Register.* The new chapter contains substantive changes and was prompted, in part, by statutory changes. The board was subject to Sunset Commission review in 2011 resulting in the enactment of the board's reauthorization bill, Senate Bill 660. In Senate Bill 660, the 82nd Legislature also amended sections of Texas Water Code Chapter 36, relating to groundwater conservation districts. Other changes were made to Chapter 36 through Senate Bills 727 and 737. Rule changes arising out of enactments from the 82nd Legislature include: (1) changing the final quantified output of the joint planning process used in the groundwater conservation districts' management plans and the related definition from "managed available groundwater" to "modeled available groundwater;" (2) adding a definition of "desired future condition;" and (3) expanding the process and requirements for adoption of desired future conditions by the groundwater conservation districts in a groundwater management area.

This new chapter reorganizes the materials so that rules are arranged to reflect the sequential steps in the board's process of working with the groundwater conservation districts. The process of designating groundwater management areas, adoption and appeal of desired future conditions, and developing, reviewing, and approving districts' management plans is more transparent as the rules generally reflect the order in which the groundwater conservation districts conduct their work. Another benefit of reorganizing the rules is that new Chapter 356 contains new directives relating to the board's review of district management plans and the procedure for hearings of appeals of desired future conditions.

PUBLIC COMMENTS

The following entities provided comments: Blanco-Pedernales Groundwater Conservation District (Blanco-Pedernales); Clearwater Underground Water Conservation District (Clearwater UWCD); Hemphill County Underground Water Conservation District (Hemphill County UWCD); High Plains Underground Water Conservation District (High Plains); Hill Country Underground Water Conservation District (Hill Country); William R. Hutchison, Ph.D., P.E., P.G, Independent Groundwater Consultant (Hutchison); Kenedy County Groundwater Conservation District (Kenedy County GCD); Lone Star Groundwater Conservation District (Loan Star); Middle Trinity Groundwater Conservation District (Middle Trinity); North Texas Groundwater Conservation District (North Texas); Panola County Groundwater Conservation District (Panola County GCD); Prairielands Groundwater Conservation District (Prairielands); Rolling Plains Groundwater Conservation District (Rolling Plains); Sandy Land Underground Water Conservation District (Sandy Land); Texas Alliance of Groundwater Districts (TAGD); Upper Trinity Groundwater Conservation District (Upper Trinity); and San Antonio Water System (SAWS).

General Comments

Clearwater, Hemphill County UWCD, High Plains, Lone Star, Middle Trinity, North Texas, Panola County GCD, Prairielands, Rolling Plains, Sandy Land, TAGD, and Upper Trinity recommended the proposed rule changes strictly conform to the language used in Texas Water Code Chapter 36. Texas Water Code §6.101 authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB as provided by the Texas Water Code and other laws of the state, in accordance with provisions of the Administrative Procedure Act (Texas Government Code Chapter 2001). Texas Government Code §2001.003 in part defines a rule as an agency statement of general applicability that implements, interprets, or prescribes law or policy; or describes the procedure or practice requirements of the agency. Texas Water Code Chapter 36 requires the TWDB to provide technical assistance to the districts in the development of management plans (Texas Water Code §36.1071(d)), and in joint planning to develop a desired future condition (Texas Water Code §36.1081). In addition, the TWDB

must provide each district and regional water planning group with the modeled available groundwater in the management area based upon the desired future conditions adopted by the districts (Texas Water Code §36.1084) and must review a petition appealing the approval of a desired future condition (Texas Water Code §36.1083(c)). Under its statutory authority, the TWDB proposes rules to fulfill its responsibilities to the districts and to facilitate the work of the districts. The information requested in certain provisions of these rules is for the purpose of fulfilling those responsibilities. The TWDB is thereby better able to efficiently facilitate the planning and modeling of the districts. The TWDB adopts the rules as proposed with changes that do not detract from the statutes nor change the substantive requirements of the statutes, but that more completely reflect the TWDB's interpretation and administration of the statutes.

One commenter at the hearing commented that the rules are ambiguous in that it is not clear what is to be accomplished at the end of the five-year period. The statute, Texas Water Code §36.108(d), provides that "not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall propose for adoption desired future conditions for the relevant aquifers within the management area." Section 356.31(a) provides that not later than five years after the date on which the districts in a GMA last collectively adopted a desired future condition, the districts shall propose a desired future condition for adoption in accordance with Texas Water Code §36.108. The action the districts must take at the end of the five-year period is to "propose" desired future conditions for adoption. This provision tracks statutory language. The statute is silent as to what, if any, action is required following proposal by the districts, and no time frame for taking action is specified. Therefore, the TWDB makes no changes to the proposed text of the rules.

Section 356.10

Kenedy County GCD suggested changing the title of the defined term "conjunctive use issues" in §356.10(5) to "conjunctive surface management issues" to conform to the statute. This commenter also noted that the term "conjunctive use issues" is not used in the rules, but that "conjunctive surface management issues" is used. Kenedy County GCD did not recommend any change to the definition itself. The TWDB adopts the change as consistent with the statutory language but without causing a substantial change to either the definition or its use.

Regarding §356.10(6), SAWS suggested that the requirement that desired future conditions be "physically possible" be included in the definition. The TWDB adopts §356.10(6) without changes to the proposed text. The current definition is consistent with the statutory definition. Whether a desired future condition is physically possible may still be considered in an appeal of the adoption of the desired future condition, as discussed in §356.43 and will be part of the technical resource discussions that the TWDB will have with the groundwater conservation districts (districts) in a groundwater management area (GMA) during the development of a desired future condition. Unless the desired future condition is physically possible, the TWDB will not be able to calculate modeled available groundwater.

One commenter questioned the definition of the term "most efficient use of groundwater" in proposed §356.10(12) as not in the statutes and a difficult concept to assess. The TWDB adopts §356.10(12), now §356.10(14), without changes to the proposed text. "Most efficient use of groundwater" is the first management goal listed in Texas Water Code §36.1071, relating to Management Plans. Defining the term provides guidance to the districts in developing their management plans.

Kenedy County GCD recommended deleting the term "total estimated recoverable storage" in proposed §356.10(22), as it is not used in the proposed rules. In the alternative, Kenedy County GCD and Hutchison suggest including guidance on when and how the districts will receive this information. The TWDB adopts §356.10(22) (now §356.10(24)) with revisions and with the definitions renumbered for consistency with the addition of new definitions for major and minor aquifer. The term "total estimated recoverable storage" appears in Texas Water Code §36.108 and by reference in §356.31, relating to Submission of Desired Future Conditions. Defining the term provides guidance to the districts regarding the data to be provided by the TWDB to the districts as the districts develop their desired future conditions. No change will be made regarding timing and method of delivery of data, as these will vary depending on the needs and schedule of the districts in the GMA.

A commenter (Hutchison) indicated that including "desired future conditions" in the definition of "Total Estimated Recoverable Storage" in proposed §356.10(22) seems to imply that Total Estimated Recoverable Storage will be calculated after the desired future condition is known. The total estimated recoverable storage is information that is required before districts vote on a proposed desired future condition. The commenter also noted that the definition includes both current and future conditions and adds a water quality component that is not appropriate for determining Total Estimated Recoverable Storage. The commenter suggested modifying the definition by removing the phrase "aquifer conditions, hydrologic properties, water quality, and desired future conditions, and that is adjusted for." The TWDB agrees with the comments and adopts the change.

Several commenters--Blanco-Pedernales, Hill Country, High Plains, Loan Star, Upper Trinity, Rolling Plains, and TAGD--recommended defining "relevant aquifer" rather than "non-relevant aquifer" to better track the language of Texas Water Code Chapter 36. Several commenters added that corresponding definitions of "minor aquifer" and "major aquifer" are needed to provide clarity so that undifferentiated aquifers that do not fall within a major or minor category also do not fall within the "relevant aquifer" designation. The TWDB agrees with the suggested changes and has added definitions for "major aquifer" and "minor aquifer" as those aquifers are designated in the state water plan. The definition for "non-relevant aquifer" is replaced with a definition of relevant aquifer as an aquifer that is designated a major or minor aquifer. This definition as used in the rules will allow districts flexibility in identifying and designating an aquifer with regard to its relevance to both regional and local conditions. Defining "relevant" aquifers also is consistent with language in the statute.

Lone Star and Upper Trinity suggested that the TWDB distinguish between the desired future condition that is adopted by the districts acting collectively as the GMA and the subsequent adoption of the desired future condition that is "relevant" to each individual district. The TWDB adopts no further changes to the added definition of "relevant aquifer." The definition of "relevant aquifer" arises out of the use of the term in Texas Water Code §36.108(d). The word "relevant" is used in several places in Texas Water Code Chapter 36 where the meaning is clear from the context. The pertinent portion of Texas Water Code §36.108 regarding relevance to individual districts is subsection (d-4),

which refers to the desired future conditions "that apply to the district." The TWDB therefore sees no reason to further expand the rules.

Kenedy County GCD recommended deleting the term "surface water management entities" in proposed §356.10(21) as it is not used in the proposed rules. The TWDB adopts §356.10(21) (now §356.10(23)) without change except that the definitions are renumbered for consistency with the addition of new definitions for major and minor aquifer. However, §356.51 is changed in response to this comment to clarify the relevance of collaboration with "surface water management entities" in the text of the rules. The term "surface water management entities" appears in Texas Water Code §36.1071 and by reference in §356.51, relating to the Required Management Plan. Defining the term provides guidance to the districts regarding collaboration with other entities as they develop their management plans.

Kenedy County GCD recommended adding a definition of "geographic area" to clarify its use for purposes of establishing a desired future condition. The TWDB makes no changes to the rules based on the comment. The term "geographic area" is used in Texas Water Code §36.108(d)(1) in reference to aquifer uses or conditions within the GMA that the districts must consider when proposing desired future conditions. How the term applies may vary depending on the specific circumstances in a given district or GMA. The TWDB therefore leaves the definition of "geographic area" to the districts to determine as they develop their desired future conditions.

Kenedy County GCD also recommended adding a definition of "subdivision of an aquifer" as different desired future conditions may be established for "each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part in the groundwater management area" (Texas Water Code §36.108(d-1)(1)). The TWDB makes no changes to the rules based on the comment. The term "subdivision of an aquifer" is used in Texas Water Code §36.108(d-1)(1) in reference to aquifer characteristics that may warrant the establishment of different desired future conditions in a GMA. The application of the term may vary depending on the specific circumstances in a given district or GMA. Therefore, the TWDB leaves the definition and application of "subdivision of an aquifer" to the districts to determine as they develop their desired future conditions.

In addition, Kenedy County GCD recommended that the TWDB define the restrictions on the type of information districts may consider consistent with Texas Water Code §36.108(d), which provides that districts must "consider groundwater availability models and other data or information for the groundwater management area" when proposing desired future conditions. The commenter states that such discussion is needed because the TWDB is still in the position of determining the reasonableness of a desired future condition if it is challenged. In the past, according to the commenter, GMAs were to use only TWDB-developed or approved groundwater availability models. If that is still the case, the commenter urges that it be stated in the rules. The TWDB does not adopt the suggested change. Although the TWDB is not required to uncritically accept any models, data, or other information proffered by districts, the TWDB will not limit the districts as to the models, data, or other information the districts may consider in developing their desired future conditions. The TWDB expects that issues related to data, information, or models used in developing the desired future conditions will be worked out on a case-by-case basis as the TWDB provides the statutorily-required technical assistance to the districts.

Section 356.31

Blanco-Pedernales and Hill Country proposed amending §356.31(b) to require that any portion or portions of a major or minor aquifer declared to be non-relevant for joint planning in a GMA, but determined to be relevant on a local level, be included in local district groundwater management plans and in Regional Water Plans and the State Water Plan as deemed appropriate by the Regional Water Planning Group and the TWDB. The TWDB adopts §356.31(b) without the suggested change to the proposed text. The statutory language of Texas Water Code §36.108(d) does not contemplate adoption of desired future conditions for aquifers that are not determined to be "relevant" by the districts acting collectively within the GMA. Within the context of the statutory scheme, the definition of "relevant aquifer" added to replace the proposed definition of "non-relevant aquifer" is sufficient to address the commenter's concern. With "relevant aquifer" defined, statutory provisions ensure that aquifers that may be relevant to local groundwater management but that are declared to be non-relevant for regional groundwater planning purposes are treated appropriately. The TWDB does, however, add language deleted from the definition to §356.31(b) consistent with the comments that establishes the conditions under which the districts in a GMA may determine that aquifer characteristics, groundwater demands, and current groundwater uses do not warrant adoption of a desired future condition for that portion of the aquifer.

Kenedy County GCD suggested adding a statement in §356.31(b) about whether the non-relevant aquifer is or is not included as a source of water in the State Water Plan as a requirement for designating an aquifer as non-relevant. This commenter noted that the requirement is in the definitions section and could easily be overlooked. The TWDB adopts changes to the definition in §356.10(16), as discussed above, and adopts §356.31(b) with changes that address the comment. The purpose of defining a term is to establish how that term will be used. Revising the definition in §356.10(16) to reflect "relevant aquifers" and adding definitions of major and minor aquifers sufficiently addresses the link between relevance and inclusion in the state and regional water plans.

Upper Trinity recommended amending §356.31(b) by adding "major or minor" to the language: "propose classification of an aquifer or portions of an aquifer as non-relevant" to make clear that the GMAs do not have to submit documentation for an aquifer system that has not been declared as major or minor by the TWDB. The TWDB adopts §356.31(b) with changes to the proposed text. The additions of definitions for major and minor aquifers and for "relevant aquifer" sufficiently clarify that the districts in a GMA are not required to adopt a desired future condition for any non-relevant aquifer.

Upper Trinity recommended that §356.31 be revised to add language explaining that even though the districts in a GMA are required to adopt a desired future condition only for a relevant aquifer, the rules should recognize that the districts in the GMA have the option to adopt a desired future condition for a non-relevant aquifer if they elect to do so. The TWDB adopts §356.31(b) without modifying the proposed text based on the comment. The statute contemplates adoption of desired future conditions for relevant aquifers and is silent regarding adoption of desired future conditions for non-relevant aquifers. The statute also mandates specific requirements for adoption of a desired future condition. If the districts in a GMA were to adopt a desired future condition for a non-relevant aquifer, they would need to follow

the procedures set out in Texas Water Code §36.108. If they were to adopt such a desired future condition, it would have to be reported to the TWDB. The reasonableness of its approval could be appealed to the TWDB. The TWDB would need to provide the modeled available groundwater based on that desired future condition. It would need to be addressed in a district's management plan and, conceivably, must be considered in the applicable regional water plan--all of which is contrary to the concept of relevant and non-relevant aquifers as established in the statutes and developed in these rules. The TWDB therefore declines to adopt the suggested language in §356.31.

Kenedy County GCD recommended deleting the term "total estimated recoverable storage" as it is not used in the proposed rules. The TWDB adopts §356.10(24) and §356.31 with changes that address the commenter's concern. The TWDB adds an explicit reference to "total estimated recoverable storage" in §356.31(b)(2) to provide that "total estimated recoverable storage" data, which the TWDB will have supplied to the districts during consideration and adoption of desired future conditions, is to be supplied with documentation for non-relevant aquifers also to demonstrate that adjacent or hydraulically connected relevant aquifers will not be affected by the non-relevant classification.

Section 356.32

Kenedy County GCD recommended that §356.32 use the language "districts in the groundwater management area collectively adopted" as used in §356.31(a) because a GMA is not a legal entity. Kenedy County GCD also recommended adding the phrase in §356.32(3) for the same reason. The TWDB recognizes that a GMA is not a legal entity and adopts the change to clarify that the central action regarding adoption and submission of desired future conditions is the collective action of the districts meeting as the GMA.

SAWS recommended including in §356.32 a requirement that districts include separate discussions of reporting requirements and an explanation of how the explanatory report addresses certain statutory criteria. The TWDB makes no change on the basis of this comment. The statute provides the criteria for and contents of the report. The suggested language could have the effect of unintentionally altering the level of reporting that is required.

Many commenters--Sandy Land, Panola County GCD, Prairielands, Lone Star, Upper Trinity, High Plains, Middle Trinity, Rolling Plains, TAGD, and North Texas--suggested that proposed §356.32 goes beyond the statutory requirements in Texas Water Code §36.108(d-3) and §36.1084. These commenters also recommended that §356.32 be revised to require the same submission package as required by statute. The TWDB makes no change on the basis of these comments. Section 356.32(1) - (3) track the statutory reporting requirements. Section 356.32(4) requires a name of a designated representative for the GMA as an administrative requirement to assist the TWDB in communicating with the GMA about the desired future condition and other related matters. The administrative requirement is not considered burdensome and facilitates review of the submission. Section 356.32(5) is amended by adding the phrase "acceptable to the Executive Administrator" to identify what groundwater availability model files or aquifer assessments are to be submitted. This information is needed because the TWDB will use the information to resolve issues it may have as it develops the modeled available groundwater values for the districts based on the desired future condition. Providing this information will facilitate the TWDB's efforts and is not considered unduly burdensome.

Prairielands, Middle Trinity, Rolling Plains, TAGD, and North Texas suggested deleting §356.32(6) that allows the TWDB to require "any other information" that TWDB deems appropriate. The commenters expressed concern at the uncertainty that this requirement could impose and that it requires the districts to submit to the TWDB information that is not required by statute. Section 356.32(6) is amended in response to the comments by adding the phrase "to be able to estimate the modeled available groundwater." This change is to indicate that any information the executive administrator may ask for, in addition to the required information in the submission package, is for the purpose of assisting the TWDB in providing the Modeled Available Groundwater so that the districts may complete the process set out in the statutes by developing their management plans and rules based on the desired future conditions and the resultant modeled available groundwater calculations.

Section 356.34

Sandy Land, Prairielands, Panola County GCD, Upper Trinity, Middle Trinity, TAGD, High Plains, and the Clearwater UWCD stated that requiring a desired future condition package to be administratively complete prior to desired future condition adoption by a district conflicts with Texas Water Code §36.108(d-4). The commenters recommended revising proposed §356.34 to mirror the language of the statute. The TWDB adopts §356.34 without changes to the proposed text. The purpose of the administrative review prior to the districts' individual adoptions of the desired future condition is to avoid the districts adopting a desired future condition that produces a modeled available groundwater value that is unworkable, not in line with the districts' expectations, or is physically impossible. Such a situation would force the districts to go back through the review and adoption process to address possible issues that could be addressed before the districts spend otherwise avoidable time and expense.

Relating to the "non-relevant aquifer" designation, High Plains recommended that §356.34 be revised to expressly state that an individual district only has to conduct hearings within its boundaries and adopt a desired future condition after receiving the desired future condition explanatory report and resolution from the GMA if that desired future condition applies to the individual district, as set forth in Texas Water Code §36.108(d-4). North Texas and Lone Star recommended modifying §356.34 to clarify that only districts for which a particular desired future condition is applicable or relevant should be required to adopt that particular desired future condition or amendment. Similarly, Upper Trinity suggested the specific addition of "This section shall not be construed to require a district to undergo the process for adoption of another district's desired future condition in Texas Water Code §36.108 if that desired future condition does not apply to the district." Upper Trinity also proposed adding the phrase "that apply to the district" before "within its boundaries" to make clear that individual districts are only required to adopt desired future conditions and amendments that are applicable to them. Upper Trinity further suggested that §356.34 be revised to include the word "relevant" before "aquifer(s)" to show that the use of the word relevant here and in the statutes refers to the geologic water bearing formations. The TWDB adopts §356.34 without changes to the proposed text in response to these comments. The particular concerns that these comments address are adequately addressed in the statutory language.

In §356.34, SAWS recommended replacing "as soon as possible" with "90 days" for the timeframe within which each district must adopt the desired future conditions for the aquifers within its boundaries after the executive administrator declares the desired future condition package administratively complete. The TWDB adopts §356.34 without changes to the proposed text in response to this comment. The statute provides some latitude for the districts while emphasizing the need for expediency. The TWDB recognizes that need for flexibility, especially in light of some delay that may be caused by the TWDB's review or local district meeting requirements.

Section 356.35

Kenedy County GCD suggested modifying §356.35(a) by adding "by whichever deadline is latest" following "The modeled available groundwater value will be provided." The TWDB adopts §356.35 without modifying the proposed text based on the comment. The suggested change does not alter the substance of the rule or add clarity.

Regarding §356.35(a)(2), Kenedy County GCD recommended deleting "the petition is resolved" and replacing it with "an appeal under Chapter 356, Subchapter D is resolved." The TWDB agrees that this suggested change is consistent with the statutory language and with the intent of the rule. The TWDB therefore amends the language in §356.35(a)(2) to reference an appeal under Subchapter D.

Section 356.40

Kenedy County GCD recommended changing "approval" in the title of Subchapter D and in §356.40 to "adoption" for consistency and moving "established by Texas Water Code §36.1083" in §356.40 from the end of the sentence to after "the process." The TWDB amends §356.40 to reference "adoption," as this is the term used in Texas Water Code §36.108 to describe the triggering action for the districts to act collectively as the GMA under §36.108(d-3) and individually under §36.108(d-4). The adoption of the desired future condition by the districts acting collectively through the GMA is the point in time at which the districts have adopted a desired future condition that can be appealed under §36.1083. The TWDB makes no other changes to §356.40.

Section 356.41

Kenedy County GCD recommended revising Subchapter D to clarify whether a petition deadline begins from when the districts collectively adopt the desired future condition(s) or from when an individual district adopts the desired future condition(s) applicable to the district. Concerning §356.41(a)(3), Kenedy County GCD also proposed clarifying the paragraph by striking "adoption of the desired future condition" and adding at the end of the paragraph "collectively adopted the desired future condition." The TWDB agrees that a deadline is needed to allow the districts to move ahead with the various tasks that follow on the adoption of a desired future condition. The TWDB also agrees with the importance of clarifying which act of "adoption" of a desired future condition in §36.108 is the adoption that may trigger a potential appeal. The TWDB therefore revises §356.41(a)(3) to clarify that a reviewable petition must be submitted within 120 days following the date the districts in the GMA collectively adopt the desired future condition.

Section 356.42

North Texas suggested revising the word "districts" to "district" in §356.42(e) to clarify that only those districts within a GMA that are directly affected or implicated by an appeal should be required to be involved in the desired future condition appeal process before the TWDB. No change has been made to §356.42(e) based on this comment. Districts collectively adopt the desired future conditions (Texas Water Code 36.108(d-2)). The petitioner's burden under §36.1083(b) is to provide evidence that the desired future condition established by the districts is unreasonable. The TWDB, under §36.1083(c), is required to hold at least one hearing "at a central location in the management area." Moreover, §36.108 and §36.1083 consistently refer to "districts" and not to "district," indicating that the appeal involves the districts acting collectively as the GMA.

Kenedy County GCD suggested deleting §356.42(f) in its entirety, indicating that no one other than the petitioner and the respondent districts should be allowed to provide evidence and written testimony and that the evidentiary record should close at the end of the hearing. Kenedy County GCD noted that subsection (f), relating to evidence from other interested persons, is not in the statute. Kenedy County GCD suggested that its inclusion could raise due process concerns, as neither the districts nor the petitioner have an opportunity to address any issues raised by other interested persons under this provision. Kenedy County GCD suggested that "other interested persons" should be limited to those persons who have standing to be a petitioner or respondent in the subject appeal. In the alternative, Kenedy County GCD suggested that the petitioner and respondent districts be provided opportunity to respond to any post-hearing submittals. The TWDB adopts §356.42 with changes to subsection (f). No rights are being adjudicated and no due process rights are implicated. However, the term "evidence" is deleted and the phrase "statements and information" is added along with the provision at the end that the statements and information shall be provided to the board for their information but not included in the hearing record. This allows an opportunity for other interested persons to address the board. An appeal of the adoption of a desired future condition is not a contested case. Under the statute, the parties to the proceeding are the petitioner(s) and the districts in the GMA. In the interest of time and efficiency, the hearing procedure is designed to focus on receipt of evidence from the parties. Time is given following the hearing for comments from other persons with a legally-defined interest in the issues raised. These comments will be provided to the TWDB board for their information but will not be included in the hearing record that constitutes the basis for the board's decision.

Section 356.43

Prairielands, Upper Trinity, Middle Trinity, Rolling Plains, TAGD, North Texas, and Clearwater UWCD recommended that the list in §356.43(c) be revised to track the statutory language. Many commented that the review should be limited to the same factors that the individual districts are required to consider.

Hemphill County UWCD suggested revising §356.43 to assure that the scope of the TWDB's review in evaluating a petition appealing the approval of a desired future condition under Texas Water Code §36.1083 does not go beyond the issues raised in the petition and upon which evidence was submitted at the hearing.

Hemphill County UWCD recommended amending the proposed rule to clarify that in reviewing a petition appealing a desired future condition, TWDB's role is to consider whether districts have considered all required facts and not to revisit policy decisions that have expressly been left to the districts. This commenter suggested striking the enumerated factors in §356.43(c) or modifying the language limiting the TWDB's role.

Lone Star suggested revising §356.43(c) to state that a desired future condition will be considered reasonable if the explanatory report complies with all elements of the statute and supports the establishment of a desired future condition by the districts in the GMA.

Commenting on the addition of the phrase "including but not limited to" in §356.43(c), Clearwater UWCD suggested this allows the TWDB to consider issues raised in a petition that are not related to the nine factors in Texas Water Code §36.108(d) and that were not before the districts at the time a desired future condition was adopted.

Hemphill County UWCD suggested modifying §356.43(c) to avoid creating additional requirements regarding the establishment of desired future conditions that are not expressly set forth in Texas Water Code Chapter 36.

Regarding §356.43(d), Hemphill County UWCD was pleased to see the limitation provided by this subsection, but indicated that although the preamble to the proposed rule discusses the criteria in §356.43(c), the preamble did not discuss the limitation provided by §356.43(d). The commenter requested that this be further addressed in the response to comments provided in the final adoption.

The overarching theme of the comments on §356.43 is to limit consideration either to factors that are expressly stated in statutory language and to the specific issues raised in the petition. The statute does not define "reasonable." Rather, the statute provides that the "petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the management area." (Texas Water Code §36.1083(b).) This suggests that the focus of the TWDB's deliberations should be on whether the petitioner has carried the burden of providing evidence that the districts did not establish a reasonable desired future condition. The issues upon which the petition is based are thus shaped by the particular circumstances that led to the adoption of a particular desired future condition and the petitioner's assessment of why that desired future condition is not reasonable.

While the TWDB does not prescribe what issues must be addressed in a petition, it is important to recognize that the Legislature identified nine criteria the districts must consider in adopting the desired future condition and a balance that the desired future condition must achieve. Therefore, the TWDB has included review of whether the consideration districts have given to the nine factors is unreasonable and whether the balance provided by the desired future condition is unreasonable. The TWDB therefore adopts §356.43 with changes to subsection (c) and subsection (c)(2) and (4) by changing "reasonable" to "unreasonable" and restructuring the sentences to emphasize that the question is not whether the desired future condition is reasonable, but whether the petitioner has established that it is unreasonable. Subsection (c) is also amended by deleting the phrase "but not limited to," paragraph (1), relating to "physically possible," and paragraph (3), relating to a stated purpose. The remaining paragraphs are renumbered for consistency with this approach.

The TWDB adopts §356.43 with changes to subsections (d) and (b)(4). Section 356.43(d) is revised to state that consideration of the reasonableness of a desired future condition shall be limited to the issue or issues raised in the petition and upon which evidence was received in the hearing. Section 356.43(b)(4) is revised to provide that the record on which the board will make its decision shall include the executive administrator's report and recommendations based on the information described in subsection (d). For consistency with the change made in §356.42(f) regarding the content of the hearing record, subsection (b)(3) is deleted and the paragraphs renumbered appropriately.

Section 356.44

Prairielands recommended that §356.44(c) should be revised to remove the language "based upon comments received at the public hearing" when referring to the districts' revisions to the desired future conditions because there may be a situation where the districts do not receive any public comments after revising their desired future conditions. The TWDB adopts §356.44 with no change to the text. The language in subsection (c) reflects the statutory language in Texas Water Code §36.1083(d), which the TWDB interprets to mean that the districts must consider public comments if any are received. Such comments, if there are any, need to be included in the rationale provided to the TWDB for any changes to the desired future condition that vary from the TWDB's recommended revisions in order to document the districts' decision. If the districts receive no public comments, they need only note the fact, as this rationale becomes part of the administrative record of the proceedings.

Section 356.51

Kenedy County GCD recommended deleting the term "surface water management entities" in §356.10(21) as it is not used in the proposed rules. The TWDB adopts §356.51 with changes to the proposed text consistent with the change made in the definition of "surface water management entities" to clarify the entities with which the districts must collaborate as they develop their management plan.

Section 356.53

Lone Star suggested revising §356.53 to clarify that only those districts within the GMA for which a recently adopted desired future condition is applicable are required to update their management plans. Lone Star suggested that the clarification be made in either §356.53 or §356.54. The TWDB adopts §356.53 relating to management plan submission with changes to the text to reflect that, when desired future conditions are adopted by a GMA, an updated plan is required only from a district or districts for whom the desired future conditions apply.

Section 356.54

The TWDB adopts §356.54 without changes to the proposed text. As noted above, Lone Star suggested revising §356.53 or §356.54 to clarify which districts must update their management plans when desired future conditions are adopted by a GMA. The changes that were suggested have been incorporated in §356.53 as both consistent with the comments and more logical in terms of the flow of the rules.

SUBCHAPTER A. DEFINITIONS

31 TAC §356.10

STATUTORY AUTHORITY

The new section is adopted under the authority of Texas Water Code §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State.

This adoption affects Texas Water Code Chapter 36.

§356.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Words defined in Texas Water Code Chapter 36, Groundwater Conservation Districts, that are not defined here shall have the meanings provided in Chapter 36.

(1) Agency--The Texas Water Development Board.

(2) Amount of groundwater being used on an annual basis--An estimate of the quantity of groundwater annually withdrawn or flowing from wells in an aquifer for at least the most recent five years that information is available. It may include an estimate of exempt uses.

(3) Board--The six-member governing body of the Texas Water Development Board.

(4) Conjunctive use--The combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source, such as water banking, aquifer storage and recovery, enhanced recharge, and joint management.

(5) Conjunctive surface management issues--Issues related to conjunctive use such as groundwater or surface water quality degradation and impacts of shifting between surface water and groundwater during shortages.

(6) Desired future condition--The desired, quantified condition of groundwater resources (such as water levels, spring flows, or volumes) within a management area at one or more specified future times as defined by participating groundwater conservation districts within a groundwater management area as part of the joint planning process.

(7) District--Any district or authority subject to Chapter 36, Texas Water Code.

(8) Evidence--Information, including but not limited to oral statements or presentations, written materials, data files, or graphic representations, which relates to the reasonableness of the desired future conditions.

(9) Executive administrator--The executive administrator of the Texas Water Development Board or a designated representative.

(10) Groundwater Availability Model--A regional groundwater flow model approved by the executive administrator.

(11) Major aquifer--An aquifer designated as a major aquifer in the State Water Plan.

(12) Minor aquifer--An aquifer designated as a minor aquifer in the State Water Plan.

(13) Modeled Available Groundwater--The amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition.

(14) Most efficient use of groundwater--Practices, techniques, and technologies that a district determines will provide the least consumption of groundwater for each type of use balanced with the benefits of using groundwater.

(15) Natural resources issues--Issues related to environmental and other concerns that may be affected by a district's groundwater management plan and rules, such as impacts on endangered species, soils, oil and gas production, mining, air and water quality degradation, agriculture, and plant and animal life.

(16) Relevant aquifer--An aquifer designated as a major or minor aquifer.

(17) Person with a legally defined interest in groundwater--A person or entity that owns or leases land or rights to groundwater in a groundwater management area, uses a well for beneficial use in a groundwater management area, or has current or pending authorization from a district to produce groundwater.

(18) Petition--A document submitted to the executive administrator appealing the adoption of a desired future condition that complies with the requirements of §356.41(b) of this chapter (relating to Petition: Reviewability, Form, Receipt, Postponement, and Joinder).

(19) Petitioner--A person with a legally defined interest in groundwater, a district in or adjacent to the groundwater management area, or a regional water planning group for a region in the groundwater management area who appeals the adoption of a desired future condition.

(20) Projected water demand--The quantity of water needed on an annual basis according to the state water plan for the state water plan planning period.

(21) Recharge enhancement--Increased recharge accomplished by the modification of the land surface, streams, or lakes to increase seepage or infiltration rates or by the direct injection of water into the subsurface through wells.

(22) State water plan--The most recent state water plan adopted by the board under Texas Water Code §16.051 (relating to State Water Plan).

(23) Surface water management entities--Political subdivisions as defined by Texas Water Code Chapter 15 and identified from Texas Commission on Environmental Quality records that are granted authority under Texas Water Code Chapter 11 to store, take, divert, or supply surface water either directly or by contract for use within the boundaries of a district.

(24) Total Estimated Recoverable Storage--The estimated amount of groundwater within an aquifer that accounts for recovery scenarios that range between 25% and 75% of the porosity-adjusted aquifer volume.

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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Kenneth L. Petersen
General Counsel
Texas Water Development Board
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SUBCHAPTER B. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS

31 TAC §§356.20 - 356.22

STATUTORY AUTHORITY

The new sections are adopted under the authority of Texas Water Code §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out

the powers and duties in the Texas Water Code and other laws of the State.

This adoption affects Texas Water Code Chapter 36.

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. SUBMISSION OF DESIRED FUTURE CONDITIONS

31 TAC §§356.30 - 356.35

STATUTORY AUTHORITY

The new sections are adopted under the authority of Texas Water Code §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State.

This adoption affects Texas Water Code Chapter 36.

§356.31. Submission Date.

(a) Not later than five years after the date on which the districts in a groundwater management area last collectively adopted a desired future condition, the districts shall propose a desired future condition for adoption in accordance with Texas Water Code §36.108.

(b) The districts in a groundwater management area may, as part of the process for adopting and submitting desired future conditions, propose classification of a portion or portions of a relevant aquifer as non-relevant if the districts determine that aquifer characteristics, groundwater demands, and current groundwater uses do not warrant adoption of a desired future condition. In such a case no desired future condition is required. The districts must submit the following documentation to the agency related to the portion of the relevant aquifer proposed to be classified as non-relevant:

(1) A description, location, and/or map of the aquifer or portion of the aquifer;

(2) A summary of aquifer characteristics, groundwater demands, and current groundwater uses, including the total estimated recoverable storage as provided by the executive administrator, that support the conclusion that desired future conditions in adjacent or hydraulically connected relevant aquifer(s) will not be affected; and

(3) An explanation of why the aquifer or portion of the aquifer is non-relevant for joint planning purposes.

§356.32. Submission Package.

Districts must provide the following to the executive administrator no later than 60 days following the date on which the districts in the groundwater management area collectively adopted the desired future condition(s):

(1) a copy of the explanatory report addressing the information required by Texas Water Code §36.108(d-3) and the criteria in Texas Water Code §36.108(d);

(2) a copy of the resolution of the groundwater management area adopting the desired future conditions as required by Texas Water Code §36.108(d-3);

(3) a copy of the notice that was posted for the joint planning meeting at which the districts collectively adopted the desired future condition(s) as required by Texas Water Code §36.108(e) and §36.108(e-2);

(4) the name of a designated representative of the groundwater management area;

(5) any groundwater availability model files or aquifer assessments acceptable to the executive administrator used in developing the adopted desired future condition with documentation sufficient to replicate the work; and

(6) any other information the executive administrator may require to be able to estimate the modeled available groundwater.

§356.35. Modeled Available Groundwater.

(a) The executive administrator will provide the modeled available groundwater value for each aquifer with a desired future condition to districts in a groundwater management area and the appropriate regional water planning groups. The modeled available groundwater value will be provided:

(1) No later than 180 days after the executive administrator has provided notice that the submitted package is administratively complete as described in §356.32 of this subchapter (relating to Submission Package); or

(2) No later than 180 days after the date on which the board determines that an appeal under Subchapter D of this chapter (relating to Appealing Adoption of Desired Future Conditions) is resolved.

(b) An appeal of a desired future condition will be considered resolved when:

(1) The board determines that the desired future condition is reasonable; or

(2) When districts in the groundwater management area submit a revised desired future condition(s) to the board.

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 D. APPEALING ADOPTION OF DESIRED FUTURE CONDITIONS

31 TAC §§356.40 - 356.46

STATUTORY AUTHORITY

The new sections are adopted under the authority of Texas Water Code §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State.

This adoption affects Texas Water Code Chapter 36.

§356.40. Scope of Subchapter.

This subchapter describes the process related to an appeal challenging the adoption of desired future conditions established by Texas Water Code §36.1083.

§356.41. Petition: Reviewability, Form, Receipt, Postponement, and Joinder.

(a) Reviewability. The agency will review a petition when:

(1) the petition conforms to the requirements of this subchapter;

(2) the issues raised in the petition have not previously been considered by the board for the particular desired future condition in a petition under Texas Water Code §36.1083; and

(3) the petition is submitted to the executive administrator within 120 days following the date the districts in the groundwater management area collectively adopt the desired future condition(s).

(b) Form and Contents of Petition. A petition shall be addressed to the executive administrator, signed by the petitioner, and contain the following information:

(1) the petitioner's name and contact information, including mailing address, e-mail address, telephone number, and fax number and, if applicable, the same information for any person or entity designated as a representative of the petitioner;

(2) documentation that clearly identifies the nature of the petitioner's legally defined interest in groundwater in the area unless the petitioner is a district in or adjacent to the groundwater management area or a regional water planning group for a region in the area;

(3) a summary of the evidence upon which the petitioner will rely at the hearing for the contention that the adopted desired future condition is not reasonable; and

(4) evidence that the petitioner has provided a copy of the petition to each of the districts in the groundwater management area.

(c) Receipt of Petition and Acknowledgment. The executive administrator shall notify the petitioner and the districts within the groundwater management area within 15 days of receipt of a petition and advise whether the petition has been accepted as reviewable or has not been accepted as reviewable and the reasons for not accepting the petition.

(d) If the petition is not accepted, the petitioner will be allowed an additional 15 days to remedy the failure.

(e) Requests for Postponement.

(1) A district in the groundwater management area may, within 10 business days of its receipt of the executive administrator's acknowledgment of a reviewable petition, request that the executive administrator postpone review of the petition for 60 days to encourage consultation and resolution of the issues raised in the petition.

(2) Further extensions may be granted upon the request of a petitioner or a district upon a showing that the parties are in negotiations toward a resolution of the issues raised in the petition.

(f) Districts' Response to Petition. If the districts choose to respond, they shall have 90 days in which to present a written response to agency and the petitioner.

(g) Joinder of Petitions. The executive administrator may join multiple petitions concerning the same aquifers or issues within a groundwater management area if such joinder is beneficial to the agency, the petitioners, and the respondents.

§356.42. Hearing.

(a) Hearing on petition. The executive administrator shall hold at least one hearing to receive evidence and take testimony on the petition from the petitioner and the districts.

(b) Location of hearing. Any hearing shall be conducted at a central location in the groundwater management area.

(c) Notice of the hearing. The notice of hearing shall be published in the *Texas Register* and shall be provided to the petitioners, the districts, any districts adjacent to the groundwater management area, any regional water planning group in the groundwater management area, and the county judge for each county in the groundwater management area at least two weeks before the hearing.

(d) Form of hearing. A hearing under this subchapter is not a contested case hearing. The Texas Rules of Evidence, Rules of Civil Procedure, and the rules promulgated by the State Office for Administrative Hearings related to contested case hearings will not apply to this hearing. Testimony will be under oath.

(e) Hearing procedure. The executive administrator may issue any directives necessary to ensure an orderly, fair, and efficient hearing. The hearing to receive evidence and take testimony from the petitioner and districts shall be conducted by the executive administrator and shall proceed as follows:

(1) The executive administrator shall provide a concise statement relating to the scope and purpose of the hearing and shall proceed to take testimony and accept evidence.

(2) The petitioner and the districts shall be provided an equal amount of time to present testimony and evidence. The petitioner carries the burden of persuasion and may reserve time for rebuttal.

(f) Statements and information from other interested persons. The executive administrator shall provide other persons with a legally-defined interest in the issues raised in the petition the opportunity to provide statements and information in any form acceptable to the executive administrator after the hearing concludes. The executive administrator shall keep the record of the hearing open for 15 days following the end of the hearing for receipt of statements and information from other interested persons. Such statements and information will be made available to the TWDB board members when they consider the petition, but will not be considered part of the evidentiary record.

(g) The executive administrator has the discretion to adopt different or additional procedures at the hearing upon the joint request of the petitioner and the districts or on the executive administrator's own initiative.

§356.43. Board Evaluation, Consideration, and Deliberation.

(a) The executive administrator shall prepare a report on the petition, including a summary of the testimony and an analysis of the evidence received, and recommendation regarding the reasonableness of the desired future condition and any necessary findings.

(b) Record. The record on which the board will decide whether to grant the petition shall consist of:

(1) the petition and the districts' response, if any;

(2) the testimony and evidence presented at the hearing; and

(3) the executive administrator's report and recommendations based on the issue or issues that were raised in the petition.

(c) The board shall review the petition and any evidence relevant to the petition including the following criteria when determining whether a desired future condition is unreasonable:

(1) whether the balance between the highest level of groundwater production from the aquifer and conservation of groundwater in the aquifer provided by the desired future condition as described in Texas Water Code §36.108(d-2) is unreasonable; and

(2) whether the consideration the districts have given appropriate consideration to the factors set out in Texas Water Code §36.108(d) is unreasonable.

(d) The board's consideration of the reasonableness of a desired future condition pursuant to this subchapter shall be limited to the issue or issues that were raised in the petition.

(e) If the desired future condition is found to be unreasonable, the board shall make findings and recommend revisions that would make the desired future condition reasonable.

(f) The executive administrator may at any stage of the process described in this subchapter, terminate the proceedings on a petition when an agreement is reached resolving the petition or a petition has been withdrawn. A copy of any such agreement or withdrawal of the petition shall become a part of the record.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. GROUNDWATER MANAGEMENT PLAN APPROVAL

31 TAC §§356.50 - 356.57

STATUTORY AUTHORITY

The new sections are adopted under the authority of Texas Water Code §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State.

This adoption affects Texas Water Code Chapter 36.

§356.51. Required Management Plan.

In accordance with Texas Water Code §§36.1071 (including coordination with surface water management entities on a regional basis), 36.1072, and 36.1085, a district shall develop and submit to the executive administrator a management plan that meets the requirements of §356.52 of this subchapter (relating to Required Content of Management Plan). The management plan goals must be time-based and quantifiable.

§356.53. Plan Submission.

(a) A district requesting approval of its management plan, or of an update of its management plan to incorporate adopted desired future conditions that apply to the district, shall submit to the executive administrator the following:

(1) one hard copy of the adopted management plan;

(2) one electronic copy of the adopted management plan; and

(3) evidence that the plan was adopted after notice posted in accordance with Texas Government Code Chapter 551, including a copy of the posted agenda, meeting minutes, and copies of the notice printed in the newspaper or publisher's affidavit.

(b) The plan or revised plan under §356.54 of this subchapter (relating to Approval) shall be considered properly submitted to the executive administrator when all of the items specified in subsection (a) of this section are received by the executive administrator.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-8061

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SUBCHAPTER F. DATA COLLECTION AND TRAINING

31 TAC §§356.60 - 356.62

STATUTORY AUTHORITY

The new sections are adopted under the authority of Texas Water Code §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State.

This adoption affects Texas Water Code Chapter 36.

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 December 11, 2012.

TRD-201206385

Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: December 31, 2012
Proposal publication date: October 5, 2012
For further information, please call: (512) 463-8061

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS
SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §§41.2, 41.5, 41.7

The Board of Trustees of the Teacher Retirement System of Texas (TRS) adopts amendments to §41.2, relating to additional enrollment opportunities in TRS-Care; §41.5, relating to the payment of contributions; and §41.7, relating to the effective date of coverage under TRS-Care, without changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7980).

With the introduction of the new TRS-Care Medicare Advantage (medical) plans and the new TRS-Care Medicare Part D (drug) plans on January 1, 2013, several medical plans and several drug plans will be offered through the TRS-Care 2 and TRS-Care 3 levels of coverage. Also, under law, not all individuals enrolled in TRS-Care at the TRS-Care 2 and TRS-Care 3 levels of coverage will be eligible to enroll in the new TRS-Care medical plans and drug plans. Consequently, unlike in the past, there will be the need to distinguish between the plans offered under the TRS-Care 2 and TRS-Care 3 levels of coverage and the levels of coverage themselves. The adopted amendments in the following subsections clarify the distinctions between the plans and the levels of coverage: §41.2(a)(5), (6) and (7), which address the opportunities to enroll in TRS-Care that are in addition to the initial enrollment opportunities described in §41.1; and in §41.5(e) and §41.5(h)(3)(B), which address the payment of contributions in TRS-Care.

The adopted amendments also delete obsolete language in §41.2(b) and in §41.7(g), which distinguishes between special enrollment events that occurred on or before August 31, 2011 and those that occurred or will occur on or after September 1, 2011. With the passage of time, this distinction is no longer needed and the language creating this distinction is now deleted.

TRS also adopts non-substantive amendments to §§41.2, 41.5 and 41.7 to enhance the clarity of these TRS-Care rules, including those found in §§41.2(d), 41.5(h)(3)(C), and 41.7(m) and (n).

No comments were received regarding the proposed amendments.

Statutory Authority: The amended rules are adopted under §1575.052 of the Insurance Code, which authorizes the TRS Board of Trustees to adopt rules it considers necessary to implement and administer the TRS-Care health benefits program.

Cross-reference to Statute: The adopted amended rules affect Chapter 1575 of the Insurance Code, which provides for the establishment and administration of TRS-Care.

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 December 17, 2012.

TRD-201206497
Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
Effective date: January 6, 2013
Proposal publication date: October 5, 2012
For further information, please call: (512) 542-6438

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PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 101. PRACTICE AND PROCEDURE REGARDING CLAIMS

34 TAC §101.3

The Texas County and District Retirement System adopts an amendment to §101.3, concerning the filing of documents, without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8434). The rule will not be republished.

The prior rule generally provides that documents must be filed with the director at the office of the system in Austin, Texas, and are deemed filed with the system when actually received. The adopted amendment clarifies that all documents filed with the system are deemed filed when received.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §845.102, which authorizes the board of trustees of the Texas County and District Retirement System to adopt rules concerning the efficient administration of the system.

The Government Code, §844.010, 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 December 10, 2012.

TRD-201206349
Tom Harrison
General Counsel
Texas County and District Retirement System
Effective date: December 30, 2012
Proposal publication date: October 26, 2012
For further information, please call: (512) 637-3247

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CHAPTER 103. CALCULATIONS OR TYPES OF BENEFITS

34 TAC §103.11

The Texas County and District Retirement System adopts an amendment to §103.11, concerning the optional Group Term Life program it administers, without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8435). The rule will not be republished.

The amendment would replace obsolete language with the current language. In 2007, the Texas Legislature changed the name of the life insurance program. The purpose of the adopted amendment is to eliminate references to the old term of "Supplemental Death Benefit" and replace them with the current term of "Group Term Life".

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §845.102, which authorizes the board of trustees of the Texas County and District Retirement System to adopt rules and perform reasonable activities necessary or desirable for efficient administration of the system.

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 December 10, 2012.

TRD-201206350
Tom Harrison
General Counsel
Texas County and District Retirement System
Effective date: December 30, 2012
Proposal publication date: October 26, 2012
For further information, please call: (512) 637-3247

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CHAPTER 105. CREDITABLE SERVICE

34 TAC §105.5

The Texas County and District Retirement System adopts an amendment to §105.5, concerning the requirement that a governing body approve any corrections of error as it relates to service, with changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8436). The rule will be republished.

The adopted amendment provides for a streamlined process to correct errors. The previous version of the rule required the governing body of the employer to approve any adjustments that relate to service of more than 12 months or that relate to service that occurred more than 12 months before the adjustment. Depending on the nature of the correction, the director may wish to require the approval of the governing body or county judge or chief operating officer of the employer for adjustments that do not fit within this general 12-month rule. Similarly, adjustments which trigger approval of the governing body may be sufficiently routine as to not require governing body approval. The adopted amendment modifies subsection (m) and provides the director the discretion to determine when governing body or county judge or chief operating officer approval is required.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Government Code, §845.102, which authorizes the board of trustees of the Texas County and District Retirement System to adopt rules and perform reasonable activities necessary or desirable for efficient administration of the system.

The Government Code §842.112(b), is affected by this adoption.

§105.5. Correction of Errors by Employers: Record Adjustments.

(a) The sponsoring employer is responsible for the correction of an error arising from an act or omission of the employer that results in a person contributing more or less than the correct amount to the system or receiving more or less credited service, service credit or benefits than the person is rightfully entitled to receive under the system.

(b) The employer may initiate the correction process by filing an application with the system for an adjustment to the person's record. The application must adequately describe the error and set forth the terms of the adjustment to be made to the person's record.

(c) A person seeking an adjustment to a record based on an act or omission of the subdivision must apply to the sponsoring employer for a correction of the error. The system will not receive applications for record adjustments from any person other than an employer. If the system receives information relating to a possible error from a person other than an employer, the system shall forward the information to the appropriate employer.

(d) If the director is provided with satisfactory evidence of the error, the director may at his discretion accept the application and order an adjustment to the person's record in accordance with the terms set forth in the application provided:

(1) The terms of the adjustment on the face of the application would not grant the person a right, status or benefit not otherwise available under Texas Government Code, Title 8, Subtitle F;

(2) The terms of the adjustment are reasonable and can be feasibly implemented and administered by the system; and

(3) The terms of the adjustment can be implemented without causing financial instability with respect to the employer's participation in the system or causing a reduction in the accrued benefit of any other member or annuitant of the employer.

(e) In this section the term "record" means all information and amounts relating to the person and the person's beneficiary and includes information and amounts relating to the person's individual account, contributions, deposits, credited service, service credit and benefits.

(f) In this section the term "individual account" means the separate account maintained for a member consisting of the member's contributions, deposits and accumulated interest credited to the account for the benefit of the member.

(g) In this section the term "credited service" means months of service recognized for purposes of retirement eligibility.

(h) In this section the term "service credit" means the monetary credits granted to a member who performs service for a participating employer.

(i) In this section the term "filed" means received by the system.

(j) In this section the term "accepted" means approved by the system for making adjustments to a person's record in accordance with the terms of the application.

(k) The application of a sponsoring employer under this section may be filed at any time.

(l) All applications filed under this section with the system must be certified by the sponsoring employer before the application may be accepted.

(m) Depending on the nature of adjustment requested pursuant to this section, the director may require that the application must be approved by the governing board of the employer or by the county judge or chief operating officer of the employer before it may be accepted by the system.

(n) If the terms of the adjustment as set forth on the application specify a change to the person's months of credited service, that adjustment will be made upon acceptance of the application and receipt by the system of the amount that would have been contributed by the member for those specified months. The system will not accept any payments due under this section from any person other than an employer.

(o) If the terms of the adjustment as set forth on the application specify a change to the person's individual account balance, service credit or benefit, that adjustment may not be made until the system receives any payment necessary to implement the terms of the adjustment. The system will not accept any payments due under this section from any person other than an employer.

(p) With respect to certain errors that are the subject of an adjustment under this section, the sponsoring employer may request the system to provide a description of what the person's record would show if no error had occurred. This description may include changes to amounts of employee contributions, accumulated interest, prior service credit, current service credit, multiple matching credit, retirement benefits, or retirement eligibility dates. Evidence showing dates of service and the compensation that was paid to the member by the employer for such service should be submitted to the system in order that the system may accurately determine any changes.

(q) The application may specify adjustments in any amounts that do not exceed the changes to the person's record determined as if there had been no error.

(r) An application for an adjustment is not an application for retirement; however, a retirement application may be filed simultaneously with an application for adjustment. An adjustment to a person's prior service credit may not be made if the application is filed more than five years after the date the person became a member of the sponsoring employer.

(s) Adjustments to service credits or benefits shall be considered as part of, and funded in the same manner as, any other pension liabilities of the employer.

(t) The director may implement the terms of the proposed adjustment to the extent that the funding of the pension liabilities attributable to the adjustments proposed by the employer do not cause financial instability with respect to the employer's participation in the system or cause a reduction in accrued benefits of any other members or annuitants. This may include partial implementation or implementation of the adjustments in stages.

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 December 10, 2012.

TRD-201206351
Tom Harrison
General Counsel
Texas County and District Retirement System
Effective date: December 30, 2012
Proposal publication date: October 26, 2012
For further information, please call: (512) 637-3247

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CHAPTER 107. MISCELLANEOUS RULES

34 TAC §107.10

The Texas County and District Retirement System adopts an amendment to §107.10, concerning the optional Group Term Life program it administers, without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8437). The rule will not be republished.

The amendment would replace obsolete language with the current language. In 2007, the Texas Legislature changed the name of the life insurance program. The purpose of the adopted amendment is to eliminate references to the old term of "Supplemental Death Benefit" and replace them with the current term of "Group Term Life".

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §845.102, which authorizes the board of trustees of the Texas County and District Retirement System to adopt rules and perform reasonable activities necessary or desirable for efficient administration of the system.

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 December 10, 2012.

TRD-201206352
Tom Harrison
General Counsel
Texas County and District Retirement System
Effective date: December 30, 2012
Proposal publication date: October 26, 2012
For further information, please call: (512) 637-3247

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CHAPTER 109. DOMESTIC RELATIONS ORDERS

34 TAC §109.6

The Texas County and District Retirement System adopts an amendment to §109.6, concerning the optional Group Term Life program it administers, without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8438). The rule will not be republished.

The amendment would replace obsolete language with the current language. In 2007, the Texas Legislature changed the name of the life insurance program. The purpose of the adopted amendment is to eliminate references to the old term of "Supplemental Death Benefit" and replace them with the current term of "Group Term Life".

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §845.102, which authorizes the board of trustees of the Texas County and District Retirement System to adopt rules and perform reasonable activities necessary or desirable for efficient administration of the system.

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 December 10, 2012.

TRD-201206353
Tom Harrison
General Counsel
Texas County and District Retirement System
Effective date: December 30, 2012
Proposal publication date: October 26, 2012
For further information, please call: (512) 637-3247

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement Officer Standards and Education adopts an amendment to §211.1, concerning Definitions, without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7716). The rule will not be republished.

The amendment adds language to 37 TAC §211.1, Definitions.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151.

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 December 12, 2012.

TRD-201206404
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: January 17, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 936-7713

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37 TAC §211.29

The Texas Commission on Law Enforcement Officer Standards and Education adopts an amendment to §211.29, concerning Responsibilities of Agency Chief Administrators, without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7719). The rule will not be republished.

The amendment adds language to 37 TAC §211.29, Responsibilities of Agency Chief Administrators.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.3075.

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 December 12, 2012.

TRD-201206405
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: January 17, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 936-7713

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CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.13

The Texas Commission on Law Enforcement Officer Standards and Education adopts an amendment to §215.13, concerning Risk Assessment, without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7720). The rule will not be republished.

The amendment adds language to 37 TAC §215.13, Risk Assessment.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.254.

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 December 12, 2012.

TRD-201206406
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: January 17, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 936-7713

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37 TAC §215.15

The Texas Commission on Law Enforcement Officer Standards and Education adopts an amendment to §215.15, concerning Basic Licensing Enrollment Standards, without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7721). The rule will not be republished.

The amendment adds language to 37 TAC §215.15, Basic Licensing Enrollment Standards.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §§1701.151, 1701.402, and 1701.306.

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 December 12, 2012.

TRD-201206407
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: January 17, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 936-7713

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CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.1

The Texas Commission on Law Enforcement Officer Standards and Education adopts an amendment to §217.1, concerning Minimum Standards for Initial Licensure, without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7723). The rule will not be republished.

The amendment adds language to 37 TAC §217.1, Minimum Standards for Initial Licensure.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.306.

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 December 12, 2012.

TRD-201206408
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: January 17, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 936-7713

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37 TAC §217.2

The Texas Commission on Law Enforcement Officer Standards and Education adopts an amendment to §217.2, concerning Minimum Standards for Telecommunicators, without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7725). The rule will not be republished.

The amendment adds language to 37 TAC §217.2, Minimum Standards for Telecommunicators.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.405.

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 December 12, 2012.

TRD-201206410
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: January 17, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 936-7713

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37 TAC §217.3

The Texas Commission on Law Enforcement Officer Standards and Education adopts an amendment to §217.3, concerning Ap-

plication for License and Initial Report of Appointment, without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7727). The rule will not be republished.

The amendment adds language to 37 TAC §217.3, Application for License and Initial Report of Appointment.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §§1701.151, 1701.303, and 1701.452.

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 December 12, 2012.

TRD-201206411
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: January 17, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 936-7713

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37 TAC §217.5

The Texas Commission on Law Enforcement Officer Standards and Education adopts an amendment to §217.5, concerning Denial and Cancellation, without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7727). The rule will not be republished.

The amendment adds language to 37 TAC §217.5, Denial and Cancellation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151.

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 December 12, 2012.

TRD-201206412
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: January 17, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 936-7713

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37 TAC §217.21

The Texas Commission on Law Enforcement Officer Standards and Education adopts an amendment to §217.21, concerning Firearms Proficiency Requirements, without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7728). The rule will not be republished.

The amendment adds language to 37 TAC §217.21, Firearms Proficiency Requirements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §§1701.151, 1701.308, 1701.355, and 1701.402.

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 December 12, 2012.

TRD-201206413
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: January 17, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 936-7713

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CHAPTER 221. PROFICIENCY CERTIFICATES

37 TAC §221.25

The Texas Commission on Law Enforcement Officer Standards and Education adopts an amendment to §221.25, concerning Civil Process Proficiency, without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7730). The rule will not be republished.

The amendment adds language to 37 TAC §221.25, Civil Process Proficiency.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §§1701.151, 1701.354, and 1701.402.

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 December 12, 2012.

TRD-201206431
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: January 17, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 936-7713

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37 TAC §221.37

The Texas Commission on Law Enforcement Officer Standards and Education adopts an amendment to §221.37, concerning Cybercrime Investigator Proficiency, without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7732). The rule will not be republished.

The amendment adds language to 37 TAC §221.37, Cybercrime Investigator Proficiency.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.402.

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 December 12, 2012.

TRD-201206432
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: January 17, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 936-7713

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37 TAC §221.39

The Texas Commission on Law Enforcement Officer Standards and Education adopts new §221.39, concerning Crime Prevention Specialist Proficiency, without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7732). The rule will not be republished.

The new rule is necessary to create a certification standard for individuals who identify crime risks in local communities, coordinate resources, and employ strategies to reduce or eliminate these risks.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.402.

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 December 12, 2012.

TRD-201206433
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: January 17, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 936-7713

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CHAPTER 223. ENFORCEMENT

37 TAC §223.15

The Texas Commission on Law Enforcement Officer Standards and Education adopts an amendment to §223.15, concerning Suspension of License, without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7733). The rule will not be republished.

The amendment adds language to 37 TAC §223.15, Suspension of License.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.501.

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 December 12, 2012.

TRD-201206434
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: January 17, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 936-7713

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER A. GENERAL

43 TAC §9.4

The Texas Department of Transportation (department) adopts amendments to §9.4, concerning Civil Rights - Title VI Compliance. The amendments to §9.4 are adopted without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8192) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, et seq., and related statutes provide that no person in the United States, on the grounds of race, color, national origin, sex, age, or disability, shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving federal financial assistance. Under 23 C.F.R. Part 200, the department, as a recipient and distributor of federal funds, must take certain steps to ensure that discrimination addressed by Title VI does not occur.

Amendments to §9.4 clarify the department's Title VI responsibilities under 23 C.F.R. §200.9(b)(6), which requires annual reviews of special emphasis program areas to determine the effectiveness of program area activities at all levels, and 23 C.F.R. §200.9(b)(7), which requires Title VI reviews of recipients of Federal-aid highway funds, including cities, counties, consultant contractors, suppliers, universities, colleges, and planning agencies. Some of the department's special emphasis programs include planning, project development, right-of way, construction, and research.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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 December 14, 2012.

TRD-201206483
Jeff Graham
General Counsel
Texas Department of Transportation
Effective date: January 3, 2013
Proposal publication date: October 12, 2012
For further information, please call: (512) 463-8683

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PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §§215.105, 215.107, 215.116 - 215.119

The Texas Department of Motor Vehicles (department) adopts amendments to §215.105 and §215.107 and new §§215.116 - 215.119, concerning motor vehicle distribution, without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7740) and will not be republished. Elsewhere in this issue of the *Texas Register,* the department contemporaneously withdraws the amendment to §215.307 which was published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7740).

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

Amendments and new sections are adopted for clarification of statutory provisions and to implement Senate Bill 529, 82nd Legislature, Regular Session, 2011 (SB 529). The department's Board established the SB 529 Advisory Committee to provide an opportunity for manufacturers and franchised dealers to have input regarding the implementation of the new law. The amendments and new sections are adopted to implement the law, particularly where consensus was reached between motor vehicle dealers in Texas and the manufacturers that supply Texas' dealers with motor vehicles.

Amendments to §215.105, Notification of License Application; Protest Requirements, are adopted to correct a cross reference and to implement the protest standing requirements added by Occupations Code, §2301.6521 and §2301.6522. Amendments throughout §215.105 delete cross references to Occupations Code, §2302.652 and to §2301.652(a) to correct a cross reference and because varying statutory standing requirements are now found under multiple provisions of Occupations Code, Chapter 2301 (i.e., Occupations Code, §§2301.476, 2301.652(b), 2301.6521, and 2301.6522). The amendments adopted as §215.105(d) will afford a protestant with opportunity to reference the applicable statutory provision to clearly establish standing to protest. Adopted amendments to §215.105 and the amendments to §215.106 adopted by the Board on July 12, 2012, clarify that a protest will be disallowed for failing to timely file the protest or the protest filing fee. Section 215.105 renumbers existing §215.105(b) to §215.105(e).

Amendments to §215.107, Hearing, are adopted to clarify which areas of the department perform certain functions. Additional amendments to §215.107 are adopted to delete the specific statutory reference and to broaden the statutory cross reference to Occupations Code, Chapter 2301, because a contested case hearing may be held under Occupations Code, §2301.652(a), and under additional provisions of Chapter 2301.

New §215.116, Lease or Sublease Listing, is adopted to implement Occupations Code, §2301.4651, as promulgated by SB 529. New §215.116 is adopted to clarify the statutory requirement regarding mitigation and lease of the dealership when the dealership is required to comply with Occupations Code, §2301.4651(e). Use of the term "line-make" throughout SB 529 may create ambiguity because a line-make does not necessarily include the entire dealership, apply to all manufacturers with a franchise at the dealership, or encompass all franchises held by one dealer. For example, termination or discontinuation of a line-make does not always terminate a franchise or affect the totality of a dealership. Therefore, new §215.116 is adopted to clarify that only that portion of the dealership related to the termination or discontinuation is to be listed for lease or sublease as required by Occupations Code, §2301.4651(e).

New §215.117, Market Value Property Appraisal, is adopted to implement Occupations Code, §2301.482. New §215.117(a) is adopted to clarify that the appraiser described in Occupations

Code, §2301.482(c), is a General Certified Real Estate Appraiser, rather than a Certified Residential Real Estate Appraiser or a State-Licensed Real Estate Appraiser. A General Certified Real Estate Appraiser may appraise all types of real property, including commercial property.

New §215.117(b) is adopted to implement Occupations Code, §2301.482(b). A determination of what is "necessary real estate" or "necessary construction" in connection with a property use agreement that grants the manufacturer or distributor the exclusive rights to direct the use of the dealership is determined by the applicable property use agreement on a case-by-case basis.

New §215.117(c) is adopted to implement Occupations Code, §2301.482(c). The adopted subsection clarifies that the calculation of market value determination is to be made by averaging the independent results of the three appraisers.

New §215.118, Determination of Affected County for Dealership Relocation, is adopted to implement new Occupations Code, §2301.6521, as promulgated by SB 529. The Code Construction Act, Texas Government Code, §311.005, defines the term "population" to mean "the population shown by the most recent federal decennial census." Currently, the eight Texas Counties of Bexar, Collin, Dallas, Denton, Fort Bend, Harris, Tarrant, and Travis qualify as affected counties as defined under Occupations Code, §2301.6521(a). An affected county is a county with a population of one million or more; or a county with a population of 500,000 or more but less than one million that is adjacent to a county with a population of one million or more. This section applies to a protest of an application for relocation from an affected county to an adjacent affected county or within the same affected county. This list of eight counties will not be modified until the official results of the next federal decennial census in 2020 are released by the U.S. Census Bureau for the reporting category of Population in Texas by County.

New §215.119, Standing to Protest, is adopted for clarification of the applicable standing requirements under Occupations Code, §§2301.476, 2301.652, 2301.6521, and 2301.6522 as determined by the application that is filed with the division. Adopted new §215.119 clarifies the complex and varying standing requirements that differ among the various types of applications. Standing requirements also vary, based on the county location involved. Generally, the standing requirements for eligibility to protest an application for establishing a dealership, relocating a dealership, or adding a new line-make at an existing dealership will be based on the standing requirements under Occupations Code, §2301.652. However, SB 529 provides new standing requirements applicable to specific applications and under particular circumstances involving affected counties and economically impaired dealers as defined by Occupations Code, §2301.6522(a). When an application triggers the affected county provisions, standing requirements for eligibility to protest will be determined in accordance with Occupations Code, §2301.6521. When an application triggers the economically impaired dealer provisions, standing requirements for eligibility to protest will be determined in accordance with Occupations Code, §2301.6522.

New §215.119(a) is adopted to expressly state that the protestant has the burden of proof to demonstrate it meets standing requirements to protest. The franchised dealer challenging the application filed with the department has always had the burden of proof if standing to protest is challenged. Courts do not have subject matter jurisdiction over a party that does not have standing. Subject matter jurisdiction cannot be waived. Therefore, new §215.119(a) is adopted to remove ambiguity.

New §215.119(b) is adopted to simplify the complex standing provisions found in several sections throughout Occupations Code, Chapter 2301. Because standing eligibility requirements differ, based upon the type of application filed and the physical location of the franchised dealership to which the application applies, new §215.119(b) is adopted to cross reference the applicable statutory standing authority based upon the application filed with the division.

Adopted new §215.119(b)(1) is consistent with existing §215.108 and clarifies that an amendment to add a line-make to an existing license will be treated as an application to establish a dealership. In accordance with the provisions of Occupations Code, §2301.652, standing to protest an application to add a line-make to an existing license will follow the standing provisions adopted in new §215.119(c), determined by both the purpose of the application and by the physical location involved.

New §215.119(b)(2) is adopted to cross reference the standing requirements found under Occupations Code, §2301.652 applicable to dealership relocations, generally.

New §215.119(b)(3) is adopted to cross reference the standing requirements found under Occupations Code, §2301.6521, applicable to a relocation when the affected county analysis is triggered by the facts of a specific application.

New §215.119(b)(4) is adopted to cross reference the standing requirements found under Occupations Code, §2301.6522, applicable to relocations when the economically impaired dealer analysis is triggered by the facts of a specific application.

New §215.119(b)(5) is adopted to cross reference the standing requirements found under Occupations Code, §2301.476, applicable to an application filed by a manufacturer, distributor, or representative for an extension of time for its ownership or control of a dealership.

New §215.119(c) - (g) are adopted to clarify, simplify, and set forth the statutory standing requirements applicable to each particular type of application that will be received by the division.

New §215.119(c) is adopted to provide the eligibility standing requirements to protest an application for establishment of a new dealership or to add a franchised line-make at an existing dealership in accordance with Occupations Code, §2301.652. These standing requirements are the same as those established in statute prior to promulgation of SB 529.

New §215.119(d) is adopted to provide the eligibility standing requirements to protest an application for relocation of a dealership. The requirements adopted in new §215.119(d) for general dealership relocation applications are the same standing requirements as those established in statute prior to promulgation of SB 529.

New §215.119(e) is adopted to address standing requirements when an application triggers the affected county provisions of Occupations Code, §2301.6521. The provisions of Occupations Code, §2301.6521 apply in instances when an application is filed to relocate a dealership within an affected county or from an affected county to an adjacent affected county. Standing to protest the application for relocation assumes that the protesting dealer is franchised for one or more of the line-makes at the proposed relocation site. If the relocation site is less than two miles from the current dealership location, no dealer has stand-

ing to protest the relocation application in accordance with Occupations Code, §2301.6521(d), regardless of whether the relocation site is nearer or farther. If the relocation site is more than two miles from the current dealership location, then each dealer located within 15 miles of the proposed relocation site with a franchise for one or more of the line-makes that is the subject of the relocation application will have standing to protest the application in accordance with Occupations Code, §2301.6521(b)(2). However, if no dealer with a franchise to sell the line-make that is the subject of the relocation application is located within 15 miles of the proposed relocation site, then a protesting dealer must be located in the affected county of the proposed relocation site and be the nearest dealer to the proposed relocation site with a franchise for the line-make. Determination of standing to protest a relocation application engaging the affected county provisions of Occupations Code, §2301.6521, will require the evaluation described above to be made for each of the line-makes proposed for relocation.

It is possible for multiple dealers to have standing to protest the application when the two-mile threshold has been met and more than one dealer with a franchise for one or more of the line-makes proposed for the relocation site exists within the 15 mile radius.

However, if no dealer located within 15 miles of the proposed relocation site holds a franchise for one or more of the line-makes proposed for relocation, then with regard to each particular line-make, only one dealer has or may have standing to protest. But, that one dealer (for each line-make) has standing to protest only if it is located in the same affected county as the proposed relocation site and no other dealer franchised for the line-make is located nearer to the proposed relocation site. The conjunction "and" appears twice in Occupations Code, §2301.6521(b)(1). In this example where no dealership with a franchise for the same line-make as the relocating dealership is located within 15 miles of the proposed relocation site, the protesting dealer must meet all elements under Occupations Code, §2301.6521(b)(1) to have standing to protest the relocation.

New §215.119(f) is adopted to address standing requirements when an application triggers the economically impaired dealer provisions of Occupations Code, §2301.6522. The provisions of Occupations Code, §2301.6522 govern an application for relocation filed by an economically impaired dealer.

New §215.119(g) is adopted to provide the eligibility standing requirements to protest an application filed by a manufacturer, distributor, or representative under Occupations Code, §2301.476 for extension of time during which the manufacturer, distributor, or representative may continue to own or control a dealership. The requirements adopted in new §215.119(g) are to clarify the same standing requirements that existed under Occupations Code, §2301.476, as those established in statute prior to promulgation of SB 529.

No section was proposed and no section is adopted in this package to clarify or harmonize new Occupations Code, §§2301.4671, 2301.481, and 2301.482 with 2301.476. Occupations Code, §2301.4671(3), prohibits *exclusive* control by the manufacturer, distributor, or representative over the use of the dealership property. Occupations Code, §2301.481 is a prohibition against a manufacturer, distributor, or representative *requiring* a dealer to enter into a property use agreement. Occupations Code, §2301.482 is permissive in that a dealer *may* enter into a property use agreement for cash consideration that grants the manufacturer or distributor the exclusive rights to direct the use of the dealership. Occupations Code, §§2301.4671, 2301.481, and 2301.482 are distinguishable from §2301.476(a) - (c) that prohibits or limits a manufacturer's, representative's, or affiliate's operation, control, or ownership interest in a dealer or dealership.

COMMENT

The department received comments from the Texas Automobile Dealers Association (TADA).

TADA suggested that the department adopt no amendments to §215.307. TADA questioned the interplay between two provisions. First, §2301.263 provides that a *license* issued under Occupations Code, Chapter 2301 is subject to each provision and Board rule in effect on the date the license is issued, as well as each provision under Occupations Code, Chapter 2301 and rule that take effect during the term of the license. Second, the non-amendatory provisions of SB 529 Sections 16 and 17 provide that the change in law made by SB 529 applies only to an *agreement* entered into or renewed under Occupations Code, Chapter 2301 on or after September 1, 2011. An agreement entered into or renewed before September 1, 2011, is governed by the law in effect on the date the agreement was entered into or renewed and the former law is continued in effect for that purpose.

RESPONSE

The Board reviewed Occupations Code, §2301.263; SB 529 Sections 16 and 17; Government Code, §§311.021, 311.022, 311.023, 312.005, and 312.014; and TADA's comments.

At this time, the Board withdraws amendments proposed to §215.307, with neither concurrence nor disagreement with TADA's comments or position.

STATUTORY AUTHORITY

The amendments and new sections are adopted under Occupations Code, §2301.151, which gives the Board exclusive and original jurisdiction to regulate distribution, sale, and lease of motor vehicles governed by Occupations Code, Chapter 2301. The amendments and new sections are also adopted under Transportation Code, §1002.001; and Occupations Code, §2301.155, which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Occupations Code, §§2301.4651, 2301.476, 2301.652, 2301.6521, 2301.6522, and 2301.482.

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 December 17, 2012.

TRD-201206499
Margaret A. Wilson
General Counsel
Texas Department of Motor Vehicles
Effective date: January 6, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 467-3853

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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

Department of Assistive and Rehabilitative Services

Title 40, Part 2

The Department of Assistive and Rehabilitative Services (DARS) proposes to review 40 TAC Chapter 109, concerning Office for Deaf and Hard of Hearing Services, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register,* DARS contemporaneously proposes the repeal and replacement of Chapter 109.

Comments on the proposed review may be submitted to: Department of Assistive and Rehabilitative Services, Rules Coordinator, 4800 North Lamar Boulevard, Suite 150A-2, Austin, Texas 78756 or electronically to DARS.Rules@dars.state.tx.us.

TRD-201206544
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: December 19, 2012

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Texas Department of Insurance

Title 28, Part 1

The Texas Department of Insurance will review and consider for readoption, revision, or repeal all sections of the following chapters of Title 28, Part 1 of the Texas Administrative Code, in accord with the Texas Government Code §2001.039: Chapter 1, General Administration; Chapter 3, Life, Accident and Health Insurance and Annuities; Chapter 8, Early Warning System for Insurers in Hazardous Condition; Chapter 9, Title Insurance; Chapter 12, Independent Review Organizations; Chapter 13, Miscellaneous Insurers; Chapter 22, Privacy; Chapter 25, Insurance Premium Finance; Chapter 28, Supervision and Conservation; Chapter 29, Guaranty Acts; Chapter 31, Liquidation; Chapter 33, Continuing Care Retirement Facilities; and Chapter 34, State Fire Marshal.

The Department will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accord with the Administrative Procedure Act, Texas Government Code Chapter 2001.

If you wish to comment on whether these rules should be repealed, readopted, or readopted with amendments, you must do so in writing no later than 5:00 p.m., January 28, 2013. Texas Department of Insurance requires two copies of your comments. Send one copy to Norma Garcia, Chief Clerk, 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 Stan Strickland, Associate Commissioner, Legal Section, P.O. Box 149104, MC 110-1A, Austin, Texas 78714-9104.

TRD-201206488
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: December 14, 2012

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Adopted Rule Reviews

Texas Medical Board

Title 22, Part 9

The Texas Medical Board (Board) adopts the review of Chapter 197, Emergency Medical Service, §§197.1 - 197.6, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8209).

Elsewhere in this issue of the *Texas Register,* the Texas Medical Board contemporaneously adopts amendments to §197.2 and §197.3.

The Board has determined that the reasons for adopting the sections continue to exist.

No comments were received regarding the rule review.

This concludes the review of Chapter 197, Emergency Medical Service.

TRD-201206439
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Filed: December 13, 2012

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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: 7 TAC §12.12(b)(1)(B)

Table 1 - Conversion Factor Matrix for Calculating Potential Future Credit Exposure.[1]

Original maturity[2]	Interest Rate	Foreign exchange rate and gold	Equity	Other[3] (includes commodities and precious metals except gold)
1 year or less	0.015	0.015	0.20	0.06
Over 1 to 3 years	0.03	0.03	0.20	0.18
Over 3 to 5 years	0.06	0.06	0.20	0.30
Over 5 to 10 years	0.12	0.12	0.20	0.60
Over ten years	0.30	0.30	0.20	1.00

[1] For an OTC derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

[2] For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

[3] Transactions not explicitly covered by any other column in Table 1 are to be treated as "Other."

Figure: 7 TAC §12.12(b)(1)(C)

Table 2 - Remaining Maturity Factor for Calculating Credit Exposure

	Interest Rate	**Foreign exchange rate and gold**	**Equity**	**Other[4] (includes commodities and precious metals except gold)**
Multiplicative Factor	1.5%	1.5%	6.0%	6.0%

[4] Transactions not explicitly covered by any other column in Table 2 are to be treated as "Other."

Figure: 7 TAC §12.12(c)(1)(B)(iv)(II)

Table 3 - Collateral Haircuts

SOVEREIGN ENTITIES

	Residual maturity	Haircut without currency mismatch[5]
OECD Country Risk Classification[6] 0-1	<= 1 year >1 year, <= 5 years >5 years	0.005 0.02 0.04
OECD Country Risk Classification 2-3	<= 1 year >1 year, <= 5 years >5 years	0.01 0.03 0.06

CORPORATE AND MUNICIPAL BONDS THAT ARE BANK-ELIGIBLE INVESTMENTS

	Residual maturity for debt securities	Haircut without currency mismatch
All	<= 1 year	0.02
All	>1 year, <= 5 years	0.06
All	>5 years	0.12

OTHER ELIGIBLE COLLATERAL

Main index[7] equities (including convertible bonds)	0.15
Other publicly traded equities (including convertible bonds)	0.25
Mutual funds	Highest haircut applicable to any security in which the fund can invest
Cash collateral held	0

[5] In cases where the currency denomination of the collateral differs from the currency denomination of the credit transaction, an additional 8.0% haircut will apply.

[6] OECD Country Risk Classification means the country risk classification as defined in Article 25 of the OECD's February 2011 Arrangement on Officially Supported Export Credits Arrangement.

[7] Main index means the Standard & Poor's 500 Index, the FTSE All-World Index, and any other index for which the covered company can demonstrate to the satisfaction of the Federal Reserve that the equities represented in the index have comparable liquidity, depth of market, and size of bid-ask spreads as equities in the Standard & Poor's 500 Index and FTSE All-World Index.

Figure: 28 TAC §7.209(o)

_____ by_____
name of domestic insurer name of divesting person (applicant).

Filed with the Texas Department of Insurance, date: _____, 20__.

Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

_____

_____

_____.

Figure: 28 TAC §7.209(p)

SIGNATURE

Pursuant to the requirements of Chapter 823 [~~Section 5 of Article 21.49-1,~~] Texas Insurance Code, _____ has caused this application to
Name of Applicant

be [~~duly~~] signed on its behalf in the City of _____ and State of _____, on _____, 20__ .

_____
Name of Applicant

(Seal)

By: _____
(Name)(Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared

_____ known to me to be the

_____ of _____,
(Title) (Name of Applicant)

who, after being placed on his or her oath, stated that he or she has read the preceding application and that the answers, exhibits and attachments forming it are true and correct as to any factual statements [~~contained therein~~].

_____
(Signature)

Sworn to and subscribed before me on _____, 20____ , to certify which witness my hand and seal of office.

_____
Notary Public in and for

(Seal)

_____, County, _____

Figure: 28 TAC §7.210(k)

SIGNATURE

Pursuant to the requirements of Chapter 823 [~~Section 3 of Article 21.49-1~~], Texas Insurance Code, the Registrant has caused this Registration Statement to be [~~duly~~] signed on its behalf in the City of _____ and State of _____

on _____, 20___.

_____
(Name of Registrant)

(Seal)

By: _____

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared

_____ known to me to be the

_____, who, after being placed on his or her oath, stated that he or she has read the preceding application and that the answers, exhibits and attachments forming it are true and correct as to any factual statements contained [~~therein~~].

_____
(Signature)

Sworn to and subscribed before me on _____, 20____ , to certify which witness my hand and seal of office.

_____
Notary Public in and for

(Seal)

_____, County, _____

Figure: 28 TAC §7.211(a)

Filed with the Texas Department of Insurance

by

_____

Name of Registrant

On Behalf of Following Insurance Companies:

Name Address

_____

_____

_____

_____

Date:_____, 20_____

Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

_____

_____

_____

_____

Figure: 28 TAC §7.211(g)

SIGNATURE AND CERTIFICATION

Pursuant to the requirements of Chapter 823, Texas Insurance Code, the Registrant has caused this Registration Statement to be signed on its behalf in the City of _____ and State of _____ on_____, 20____.

_____
(Name of Registrant)

(Seal)

By: _____

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____ known to me to be the _____, who, after being placed on his or her oath, stated that he or she has read the preceding application and that the answers, exhibits and attachments forming it are true and correct as to any factual statements contained.

_____
(Signature)

Sworn to and subscribed before me on _____, 20____ , to certify which witness my hand and seal of office.

_____
Notary Public in and for

(Seal)

_____County, _____

Figure: 28 TAC §7.212(a)

Filed with the Texas Department of Insurance

by

_____

Name of Applicant

On behalf of following insurance companies:

Name Address

_____

_____

_____

_____

Date:_____, 20_____

Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

_____

_____

_____

_____

Figure: 28 TAC §7.212(h)

SIGNATURE

Pursuant to the requirements of the Insurance Code Chapter 823, the applicant has caused this Prior Notice of a Transaction Statement to be signed on its behalf in the City of _____ and State of _____ on_____, 20____.

_____
(Name of applicant)

(Seal)

By: _____

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____ known to me to be the _____, who, after being placed on his or her oath, stated that he or she has read the preceding application and that the answers, exhibits and attachments forming it are true and correct as to any factual statements contained.

_____
(Signature)

Sworn to and subscribed before me on _____, 20___ , to certify which witness my hand and seal of office.

_____
Notary Public in and for

(Seal)

_____ County, _____

Figure: 28 TAC §7.213(a)

Date:_____, 20_____

Name, title, address, e-mail address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

_____

_____

_____

_____

_____

_____

Figure: 28 TAC §7.213(b)(10)

SIGNATURE

Date: _____

_____
Name of Insurer

By: _____

_____
(printed name)

_____
(Title)

Figure: 28 TAC §7.213(c)(11)

SIGNATURE

Pursuant to the requirements of the Insurance Code §823.107, the Insurer has caused this notice to be signed on its behalf in the City of _____ and the State of _____ on _____, 20 ___.

_____
(Name of Insurer)

(Seal)

By: _____
(Name)(Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____ known to me to be the _____, who, after being placed on his or her oath, stated that he or she has read the preceding application and that the answers, exhibits, and attachments forming it are true and correct as to any factual statements contained.

_____
(Signature)

Sworn to and subscribed before me on _____, 20 ____, to certify which witness my hand and seal of office.

_____
(Signature)

_____
Notary Public in and for

(Seal)

_____County, _____

Figure: 28 TAC §7.214(a)

Filed with the Texas Department of Insurance

by

_____

Name of Registrant/Applicant

On behalf of/related to following insurance companies:

Name Address

_____

_____

_____

_____

Date _____, 20__

Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

_____

_____

_____

_____

Figure: 31 TAC Chapter 65--Preamble

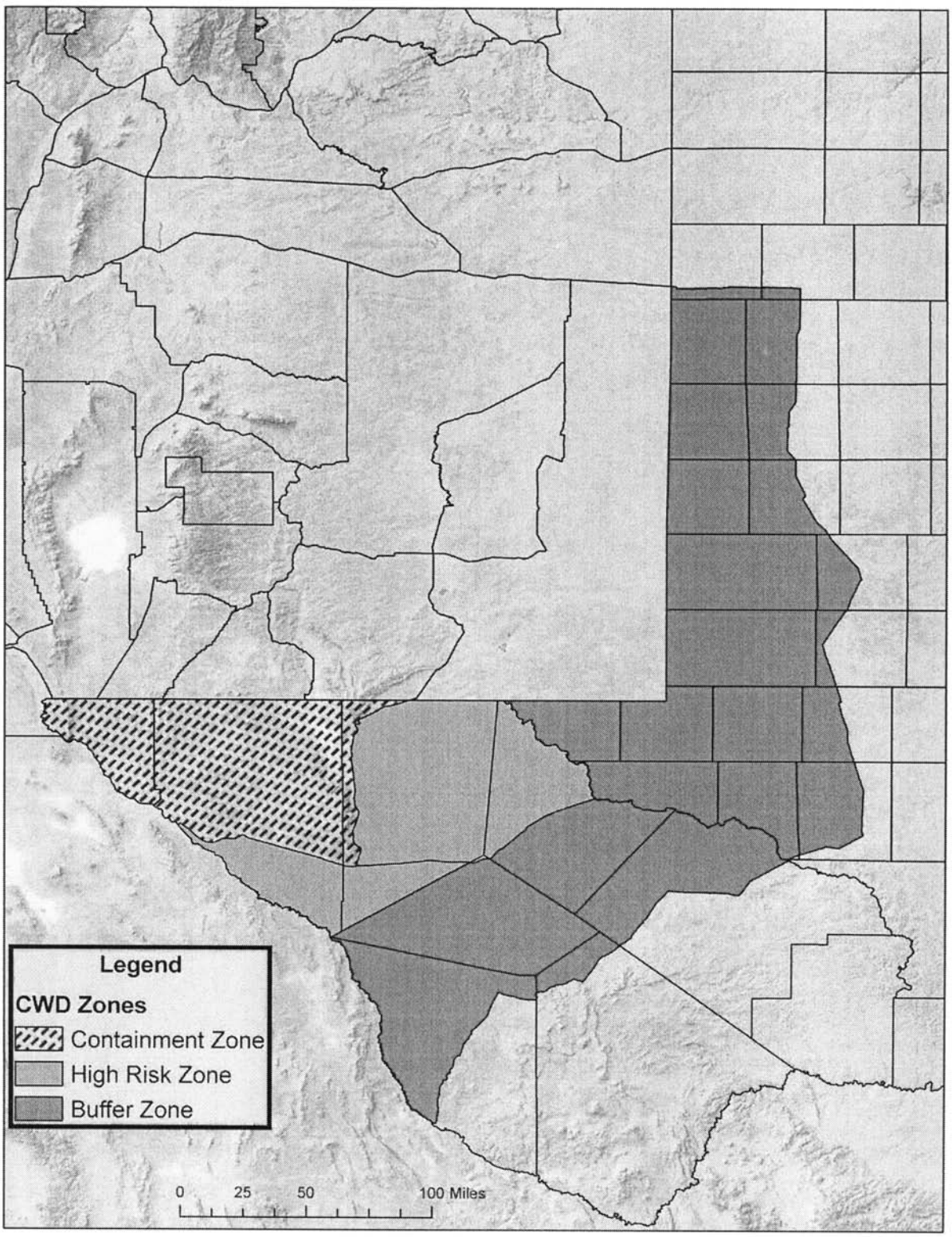

Figure: 37 TAC §15.171(c)

DSHS Contract Number: 2013-042958-001

696-TC-12-12-M154
TXDPS Contract Number 405-DL-12-12-M25560

MEMORANDUM OF UNDERSTANDING

Between the Texas Department of Criminal Justice, the Texas Department of Public Safety, and the Department of State Health Services relating to the issuance of a personal identification card to Offenders.

This Memorandum of Understanding (MOU) is entered by and between the Texas Department of Criminal Justice (TDCJ), the Texas Department of Public Safety (TXDPS) and the Department of State Health Services (DSHS) – Vital Statistics Unit for the purpose of providing personally identifying documents to Offenders prior to their release from incarceration. Collectively the TDCJ, the TXDPS, and the DSHS – Vital Statistics Unit will be referred to as "Entities" in this MOU.

I. AUTHORITY AND PURPOSE:

Texas Government Code §501.0165 authorizes the Entities to establish a MOU that identifies methods for:

- electronically verifying the identity of incarcerated Offenders through birth records;
- validating the identity of incarcerated Offenders through TXDPS;
- providing for the exchange of personally identifying Offender information between Entities;
- providing for the issuance of identifying documents for eligible Offenders in the custody of the TDCJ; and
- establishing a process for reimbursement for services provided under this section.

II. ALL ENTITIES AGREE TO:

A. Develop written procedures for the request, submission, and verification of identification documents.

B Provide routine reports to participating Entities on the status of implementation activities, including data on information requested, number of documents generated, barriers encountered and related outcomes.

C. Meet at least quarterly to discuss implementation activities and recommendations for improving the process for identification verification and document production.

D. Review technology capabilities necessary to implement an electronic process for verification and notification of an eligible Offender's identity for issuance of a State issued driver's license or State identification card.

E. Identify barriers that impact the issuance of Offender identification documents and submit findings and recommendations to policy makers.

F Agree to report any changes in state or federal rules, policies, regulations, or standards to each other

III. THE TDCJ SHALL:

A. Establish a process to determine an eligible Offender's true identity by entering into a contract with the DSHS – Vital Statistics Unit to obtain birth certificates of Offenders incarcerated in TDCJ Correctional Facilities.

B. Establish a process to address any discrepancies with information that may be contained on an eligible Offender's birth certificate, TDCJ identification card, and Social Security card so that all information on the documents is consistent.

C. Establish a process for requesting and obtaining a birth certificate no more than six (6) months and no less than two (2) months of an eligible Offender's projected release date, if the Offender's driver's license or State of Texas identification card will expire after no more than twenty four (24) months of release.

D. Establish a process for requesting and obtaining a Social Security card for all eligible Offenders who are scheduled to be released in no more than twelve (12) months and no less than two (2) months

E. Establish a process to determine the current status of an Offender's driver's license to determine when it expires. If an Offender's term of confinement ends prior to the expiration, the TDCJ will document status in a shared Offender data file.

F. Establish an internal process to record identification verification and type of documents on hand for agency personnel to access for information purposes.

G. Monitor and track the number of eligible Offenders released with verified identification documents and report findings to the Legislature.

H. Provide the TXDPS with a signed application and electronic copies of a birth certificate, TDCJ identification card, Social Security card, Offender photo, signature and fingerprints for issuance of identification card at time of release.

I. Reimburse all Entities for expenses incurred for obligations under this MOU to include the upfront programming costs and yearly maintenance fee for the web portal for ID applications, through separate Interagency Contracts with Entities.

J. Provide the TXDPS with an agreed upon notification of certification on electronic information submitted, and an explanation of variations among Offender information as needed.

IV. THE DSHS SHALL:

A. Provide certified copies of birth certificates for Texas-born Offenders by entering into a Contract with the TDCJ.

B. Establish a process to accept a secure electronic transmission of vital records application information. Information will include eligible Offenders' birth information along with images of Offenders' photos and signatures.

C. Develop a process for issuance and delivery of Offender certified birth certificates to the TDCJ.

V. THE TXDPS SHALL:

A. Accept an electronic file with required data: a signed application, birth certificate, TDCJ identification card, Social Security card, Offender photo, signature and fingerprints to process eligible TDCJ Offender identification card applicants. Images for the portrait, signature and fingerprints must have been captured within forty eight (48) hours of the application being submitted to the TXDPS.

B. Process eligible TDCJ Offender applicants for original identification cards who present, a signed application certified by a designated TDCJ employee; a birth certificate provided to the applicant by the TDCJ; a TDCJ Offender identification card; and a Social Security card or other supporting identification documents acceptable to the TXDPS. The TDCJ will obtain identity documents to support the original issuance of a State of Texas identification card in compliance with the approved Acceptable Identification Documents, Attachment A. Variances must be supported by legal documents verifying the difference. If the Offender's name cannot be verified, he/she is not a US citizen, the TDCJ cannot obtain a copy of their birth certificate or the Offender was not a resident of the State of Texas prior to incarceration, the TDCJ will not submit an application for a State of Texas identification card.

C. Accept a certificate of authenticity for the documents provided electronically in subsection (B) of this section by the TDCJ (Application – DL14A, Attachment B, will be completed and signed by both the applicant and the authorized TDCJ employee).

D. Process and issue a State of Texas identification card to eligible TDCJ applicants, who present identification meeting the criteria as set forth above.

E. Establish a web portal for TDCJ identification applications.

VI. DURATION OF MOU:

This MOU shall be effective upon signature of both parties and shall remain in effect unless cancelled by any Entity in accordance with the terms described within this document. An annual review of this Agreement is recommended but not required.

VII. CANCELLATION OR MODIFICATION OF AGREEMENT:

This MOU may be modified at any time in writing and by mutual consent of all Entities. Changes shall be in the form of a modification and shall become effective upon signature by all Entities. This MOU may be cancelled by any Entity upon thirty (30) days written notice to the other Entities.

VIII. RELATIONSHIP OF ENTITIES:

The Entities are only associated for the purposes and to the extent set forth herein, and with respect to the performance of services hereunder, the Entities shall be independent

contractors and shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to their duties hereunder. Nothing contained herein shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer-employee or principal-agent, or to otherwise create any liability whatsoever with respect to the indebtedness, liabilities, and obligations of another Entity.

IX. DISPUTE RESOLUTION:

The dispute resolution process provided for in Texas Government Code, Chapter 2009 shall be used by the Entities to attempt to resolve any claim for breach of contract made by any of the Entities that cannot be resolved in the ordinary course of business.

X. GOVERNING LAW:

This MOU shall be governed, construed and enforced in accordance with the laws of the State of Texas.

XI. NOTICES:

All notices required or permitted under this MOU shall be in writing and shall be deemed delivered when actually received, or if earlier, on the third day following deposit in the U.S. mail with proper postage affixed, addressed to the respective other Entities at the address prescribed below or at such other address as the receiving party may have prescribed by notice to the sending party. Addresses for notices shall be as follows:

TDCJ: Texas Department of Criminal Justice
Reentry and Integration Division
8712 Shoal Creek Boulevard, Suite 280
Austin, Texas 78757
Attn: B.J. Wagner

Texas Department of Criminal Justice
Contracts and Procurement
Two Financial Plaza, Suite 525
Huntsville, Texas 77340
Attn: Crystal Niersel

DSHS: Department of State Health Services
1100 West 49th Street
Austin, Texas 78756
Attn: Bob Burnette

DPS: Texas Department of Public Safety
P O Box 4087
Austin, Texas 78773-0001
Attn: Steve McCraw

XII. CERTIFICAITON:

IN WITNESS WHEREOF, the Entities have executed this MOU by the signatures of the duly authorized representative of each on the dates indicated.

Jerry McGinty, Chief Financial Officer
Texas Department of Criminal Justice

11/21/12
Date

Bob Burnette, Director, Client Services Contracting Unit
Department of State Health Services

10/22/12
Date

Steve McCraw, Director
Texas Department of Public Safety

11/12/12
Date

OGC

696-TC-12-12-M154
TXDPS Contract Number 405-DL-12-12-M25560
Attachment A

ACCEPTABLE IDENTIFICATION DOCUMENTS

PRIMARY IDENTIFICATION DOCUMENTS

These documents are accepted for identification purposes only, without the need for additional supporting documentation, and must include an identifiable photo, the applicant's full name, and the applicant's date of birth. All documents must be verifiable.

Texas driver license (DL) or identification certificate (ID) with photo within two years of expiration date

Unexpired U.S. passport book or passport card

U.S. Citizenship Certificate or Certificate of Naturalization with identifiable photo (N-560, N-561, N-645, N-550 N-55G, N-570 or N-578)

Unexpired DHS or USCIS document The document must contain verifiable data and identifiable photo. Examples include:

- U.S. Citizen Identification Card (I-179 or I-197)
- Permanent Resident Card (I-551)
- Temporary I-551 (immigrant visa endorsed with edit stamp) and foreign passport
- Temporary Resident Identification Card (I-688)
- Employment Authorization Card (I-766)
- U.S. Travel Document (I-327 or I-571)
- Advance Parole Document (I-512 or I-512L)
- I-94 stamped Sec. 208 Asylee with photo
- I-94 stamped Sec. 207 Refugee with photo
- Valid Refugee Travel Letter with photo and stamped by CBP
- American Indian Card (I-872)
- Northern Mariana card (I-873)

Foreign Passport, visa (valid or expired), and form I-94 with an undefined expiration date (e.g. duration of status) If the applicant was not required by federal law to obtain a visa to enter the United States, the visa requirement under this subsection may be waived.*

Foreign Passport, visa (valid or expired) and Form I-94 with a defined expiration date. If the applicant was not required by federal law to obtain a visa to enter the United States, the visa requirement under this subsection may be waived.*

Unexpired U.S. military ID card for active duty, reserve, or retired personnel with identifiable photo

* Examples include citizens of the Republic of Palau, the Republic of the Marshall Islands, the Federated States of Micronesia, and certain Canadian non-immigrants.

This chart is for identification of applicants only, is based on Texas Administrative Code Title 37, Part 1, Chapter 15, Subchapter B, Rule §15.24, and can be referenced at www.sos.state.tx.us/tac/. Additional application requirements can be referenced at http://www.txdps.state.tx.us/DriverLicense/.

DL-17
(Rev. 12-11)

ACCEPTABLE IDENTIFICATION DOCUMENTS

SECONDARY IDENTIFICATION DOCUMENTS	SUPPORTING IDENTIFICATION DOCUMENTS	
If an applicant is unable to present a document from the primary identification chart, the applicant must present either two secondary documents or one secondary and two supporting documents for identification purposes. DPS personnel may require additional documentation to verify conflicting information, verify incomplete names and/or DOB, or document name changes. The documents in these categories must be originals or copies certified by the issuing agency or entity. All documents must be verifiable. Any document not listed in the Supporting column that meets the Department's needs in establishing identity must be approved by DLD headquarters.		
Original or certified copy of a birth certificate issued by the appropriate State Bureau of Vital Statistics or equivalent agency from a U.S. state, U.S. territory, the District of Columbia, or a Canadian province. A birth record issued by a hospital is not acceptable under this category. Original or certified copy of U.S. Dept. of State Certification of Birth Abroad issued to U.S. citizens born abroad) (Form FS-240, DS-1350, or FS-545). Original or certified copy of court order with name and date of birth (DOB) indicating an official change of name and/or gender from a U.S. state, U.S. territory, the District of Columbia, or Canadian province.	Social Security card (actual card) Forms W-2 or 1099 Numident record from the Social Security Administration Numilite letter from the Social Security Administration Temporary receipt for a Texas DL or ID (actual receipt) DL or ID issued by another U.S. state, U.S. territory, the District of Columbia, or Canadian province (unexpired or within two years of the expiration date)(actual card) * Expired Texas DL or ID (expired more than two years) (actual card) School records * (e.g. report cards, photo ID cards, etc.) Military records (e.g. Form DD-214) Unexpired U.S. military dependant identification card (actual card) Original or certified copy of marriage license or divorce decree (U.S. jurisdiction or foreign jurisdiction – if the document is not in English, a certified translation must accompany it) Voter registration card (actual card) * Pilot's license (actual card) * Concealed handgun license (actual card) * Professional license issued by Texas state agency ID card issued by government agency *	A valid consular document issued by a state or national government Texas Inmate ID card or similar form of ID issued by TDCJ TDCJ parole or mandatory release certificate Federal inmate identification card Federal parole or release certificate Medicare or Medicaid card (actual card) Selective Service card (actual card) Immunization records * Tribal membership card from federally recognized tribe Certificate of Degree of Indian Blood Unexpired foreign passport Insurance policy (e.g. auto, home, life, etc.) (valid continuously for the past two years) Texas Vehicle title (TRC §521.144) Current Texas vehicle registration Current Texas boat registration or title Veteran's Administration card (actual card) Hospital issued birth record *

* This document must be issued by an institution, entity or government from a U.S. state, U.S. territory, the District of Columbia, or Canadian province.

TABLES AND GRAPHICS December 28, 2012 37 TexReg 10283

DL-14A (Rev. 3/12)

APPLICATION FOR TEXAS DRIVER LICENSE OR IDENTIFICATION CARD

NOTICE: All information on this application must be in INK.
DPS CANNOT REFUND PAYMENT ONCE APPLICATION IS SUBMITTED.
Applications held only 90 days.

FOR DEPARTMENT USE ONLY
RESTRICTIONS/ENDORSEMENTS

ASSIGNED # _____

APPLICATION for: DRIVER LICENSE ☐ COMMERCIAL DRIVER LICENSE (CDL) ☐
LEARNER LICENSE ☐ IDENTIFICATION CARD ☐
NON-RESIDENT COMMERCIAL DRIVER LICENSE ☐ Class (Circle) A B C M

APPLICANT INFORMATION
LAST NAME: _____
FIRST NAME _____
MIDDLE NAME: _____
SUFFIX: _____
MAIDEN NAME: _____
DATE OF BIRTH (mm/dd/yyyy): _____
SSN: _____
SEX: (Circle One) MALE FEMALE
EYE COLOR: _____ HAIR COLOR: _____
RACE: _____
HEIGHT: ft. _____ in. _____
WEIGHT: lbs. _____

CONTACT INFORMATION
HOME PHONE: _____
OTHER PHONE _____
EMAIL: _____

ADDRESS INFORMATION
RESIDENCE ADDRESS: _____
_____
CITY: _____ STATE _____
ZIP CODE _____ COUNTY: _____
MAILING ADDRESS: _____
_____
CITY: _____ STATE
ZIP CODE: _____ COUNTY: _____

UNITED STATES CITIZEN. yes _____ no _____
PLACE OF BIRTH CITY _____ COUNTY. _____ STATE _____ COUNTRY _____
FATHER'S LAST NAME: _____ MOTHER'S MAIDEN NAME: _____

REQUIRED INFORMATION FROM ALL APPLICANTS

	YES	NO	
1.	☐	☐	Do you wish to donate $1.00 to the Blindness Education Screening and Treatment Program?
2.	☐	☐	Do you wish to donate $1.00 to the Glenda Dawson Donate Life – Texas Registry?
3.	☐	☐	Would you like to register as an organ donor?
4.	☐	☐	Do you have a health condition that may impede communication with a peace officer? If yes, please list _____ (must complete form DL-101)
5.	☐	☐	Would you like to complete a voter registration application form today? You must be eligible. (¿Le gustaría llenar la forma de registro de votante hoy? Tiene que ser elegible.)
6.	☐	☐	Are you an honorably discharged Veteran?
7.	☐	☐	Do you want a veteran designation on your driver license? (proof of honorable discharge required)
8.	☐	☐	Have you ever had a Texas identification card? Number _____ When? _____
9.	☐	☐	Have you ever had a driver license or instruction permit in Texas? Number _____ When? _____
10.	☐	☐	Have you ever had a license or instruction permit in any other state? List state(s) _____ Number(s) _____ When? _____

REQUIRED INFORMATION FROM DRIVER LICENSE APPLICANTS

	YES	NO	
			DRIVING HISTORY INFORMATION
11.	☐	☐	Are you enrolled in or have you completed an approved driver education course?
12.	☐	☐	Is your driver license or driver privilege CURRENTLY or EVER been suspended, revoked, canceled, denied or disqualified in ANY state? Where? _____ When? _____ Why? _____
			VEHICLE REGISTRATION AND INSURANCE INFORMATION
13.	☐	☐	Do you own a motor vehicle which is required to be registered (Texas Transportation Code Section 502.002)?
14.	☐	☐	Do you own a motor vehicle which is required to have liability insurance OR other proof of financial responsibility in compliance with the Motor Vehicle Safety Responsibility Act (Texas Transportation Code Section 601.051)?

UNITED STATES SELECTIVE SERVICE

Any male United States citizen or immigrant who is at least 18 years of age but less than 26 years of age submitting this application consents to registration with the United States Selective Service System. You must be registered to qualify for federal student aid (to include Pell grant), job training, federal employment, and citizenship if an immigrant. In Texas, you must be registered to qualify for state college student aid or state employment. If convicted, failure to register with the Selective Service is a felony punishable by up to five years in prison and/or a $250,000 fine. If not registered by age 26, you can no longer register and could permanently lose those benefits associated with registration. For alternative options for applicants who object to conventional military service for religious or other conscientious reasons information is available at. http://www.sss.gov/FactSheets/FSaltsvc.pdf.

APPLICATION CONTINUED ON BACK

DRIVER LICENSE APPLICANTS

Answers to 1 through 7 below are for the confidential use of the Department.

MEDICAL HISTORY QUESTIONS

	YES	NO	
1.	☐	☐	Do you currently have or have you ever been diagnosed with or treated for any medical condition that may affect your ability to safely operate a motor vehicle?

EXAMPLES, including but not limited to: Diagnosis or treatment for heart trouble, stroke, hemorrhage or clots, high blood pressure, emphysema (within past two years) • progressive eye disorder or injury (i.e., glaucoma, macular degeneration, etc.) • loss of normal use of hand, arm, foot or leg • blackouts, seizures, loss of consciousness or body control (within the past two years) • difficulty turning head from side to side • loss of muscular control • stiff joints or neck • inadequate hand/eye coordination • medical condition that affects your judgment • dizziness or balance problems • missing limbs

Please explain and identify medical condition: _____

2.	☐	☐	Within the past two years, have you been diagnosed with, been hospitalized for or are you now receiving treatment for a psychiatric disorder?
3.	☐	☐	Have you ever had an epileptic seizure, convulsion, loss of consciousness, or other seizure?
4.	☐	☐	Do you have diabetes requiring treatment by insulin?
5.	☐	☐	Do you have any alcohol or drug dependencies that may affect your ability to safely operate a motor vehicle or have you had any episodes of alcohol or drug abuse within the past two years?
6.	☐	☐	Within the past two years have you been treated for any other serious medical conditions? Please explain
7.	☐	☐	Have you EVER been referred to the Texas Medical Advisory Board for Driver Licensing?

NOTICE: The information on this application is required by the Texas Driver License Act, Texas Transportation Code Chapter 521. Failure to provide the information is cause for refusal to issue a driver license or identification card, and in some cases, cancellation or withdrawal of driving privileges. False information could also lead to criminal charges with penalties of a fine up to $4,000.00 and/or jail.

DO NOT SIGN BELOW UNTIL INSTRUCTED TO DO SO BY NOTARY PUBLIC OR DRIVER LICENSE EMPLOYEE.

CERTIFICATION

I do solemnly swear, affirm, or certify that I am the person named herein and that the statements on this application are true and correct. I further certify my residence address is a (check one): ( ) single family dwelling ( ) apartment, ( ) motel, ( ) temporary shelter. I agree to immediately report to the Texas Department of Public Safety any changes in my medical condition which may affect my ability to safely operate a motor vehicle. I further understand that I am required by law to report any change of name or address to the Department of Public Safety within thirty days.

X _____ _____
Signature of Applicant Date

Texas law requires the Texas Department of Public Safety must provide every minor applicant (under age 18), and cosigner, for a driver license in Texas, educational information concerning state laws relating to driving while intoxicated, driving by a minor with alcohol in the minor's system, and the implied consent law. The minor applicant and the cosigner must acknowledge receipt of that information prior to issuance of any driver license or permit.

I hereby acknowledge receipt of the information concerning DWI, the Zero Tolerance Law and the Implied Consent Law.

_____ _____ _____
Minor Applicant Parent/Legal Guardian Date of Receipt

PARENTAL AUTHORIZATION

Required for all driver license applicants under the age of 18

I do solemnly swear, affirm, or certify that I am the person named herein, that the statements on this application are true and correct, that the above named applicant is my ( ) child ( ) stepchild ( ) ward, and that I have legal custody of the applicant. I authorize the Department of Public Safety to issue a Class ( ) A ( ) B, ( ) C, or ( ) M license to said minor. The Department can access the said minor's school enrollment records from the Texas Education Agency, and a school administrator or law enforcement officer is authorized to notify the Department if the said minor is absent from school for at least 20 consecutive instructional days.

_____ _____ _____
Usual Written Signature of Parent or Guardian Driver License Number Date

WAIVER OF PARENTAL AUTHORIZATION

Parental Authorization waived _____ _____ _____
Signature of Applicant DL Employee ACID

VERIFICATION

Sworn to and subscribed before me this _____ day of _____

_____
Notary Public in and for the State of Texas/Authorized Officer

SOCIAL SECURITY NUMBER COLLECTION DISCLOSURE

Disclosure of your social security account number is mandatory for driver license applicants but voluntary for identification card applicants. This information is solicited pursuant to 42 U.S.C. 405(c)(2)(C)(I), 42 U.S.C. 666(a)(13)(A), 45 C.F.R. 303.153, Texas Family Code Section 231.302(c)(1) and Texas Transportation Code Sections 522.021 and 521.142. The Department will use social security number information for identification purposes and will only release the number to the Child Support Enforcement Division of the Attorney General's Office, the U.S. Selective Service Administration and the Texas Secretary of State for statutorily authorized purposes pursuant to Texas Transportation Code Section 521.044.

Figure: 37 TAC §23.62(b)

Vehicle Inspection Violations and Penalty Schedule Matrix

Category	Violations	1st	2nd	3rd	4th
A	Minor violations	Re-education	Warning	Citation or 3 month suspension	6 month suspension
B	Intermediate violations	Citation or 6 month suspension	12 month suspension	Revocation for minimum of three years	Lifetime revocation
C	Serious violations	12 month suspension	Revocation for minimum of three years	Lifetime revocation	N/A
E	Emissions violations except those classed as Category C	Citation or 6 month suspension	12 month suspension	Revocation for minimum of three years	Lifetime revocation

Figure: 40 TAC §109.217(g)

Prerequisite Certificate	BEI Performance Test
BEI--Level I, Basic, Level II, Level III, Level IV, Level V RID--Comprehensive Skills Certificate (CSC), Certificate of Interpreting (CI), Certificate of Transliteration (CT), National Interpreter Certification (NIC), NIC Advanced, NIC Master	Advanced
BEI--Level III, Level IV, Level V, OC:C, or Advanced RID--CSC, CI/CT, NIC Advanced or NIC Master	Master
Level III Intermediary	Level V Intermediary
Level I Oral or OC:B	Oral Certificate: Comprehensive (OC:C)

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Draft Annual Action Plan Available for Public Comment

The Texas State Affordable Housing Corporation presents for public comment its draft 2013 Annual Action Plan, which is a component of the 2013 State Low Income Housing Plan. A copy of the draft 2013 Annual Action Plan may be found on the Corporation's website at www.tsahc.org. The public comment period for the Corporation's Draft 2013 Annual Action Plan is December 31, 2012 through January 31, 2013.

Written comment may be sent to Charlie Leal, 2200 E. Martin Luther King Jr. Boulevard, Austin, Texas 78702 or by email to cleal@tsahc.org.

TRD-201206487
David Long
President
Texas State Affordable Housing Corporation
Filed: December 14, 2012

♦ ♦ ♦

Draft Bond Program Policies and Request for Proposals Available for Public Comment

The Texas State Affordable Housing Corporation has posted a draft of the 2013 Multifamily Tax Exempt Bond Program Policies and Request for Proposals. The draft is open for public comment and available for download or viewing at the Corporation's website: www.tsahc.org. The Corporation anticipates approving the final versions at its January board meeting. Any party interested in submitting comments or questions about the draft is invited to submit comments in writing to David Danenfelzer, Manager of Development Finance, at: ddanenfelzer@tsahc.org or by letter to: Manager of Development Finance, 2200 East Martin Luther King Jr. Boulevard, Austin, Texas 78722.

Interested parties may also call the Corporation directly at (512) 477-3555 for more information.

TRD-201206477
David Long
President
Texas State Affordable Housing Corporation
Filed: December 14, 2012

♦ ♦ ♦

Draft Compliance Policy Available for Public Comment

The Texas State Affordable Housing Corporation's Multifamily Bond Program Compliance Policy, including the Assessment of Penalties for Noncompliance, is now available for public comment. A copy of the draft Compliance Policy can be found on the Corporation's website at www.tsahc.org. The public comment period for the draft Compliance Policy ends January 28, 2013.

Any party interested in submitting comments or questions about the draft policy is invited to submit comments in writing to Mindy Green, Senior Multifamily Analyst, at mgreen@tsahc.org or by mail to: Texas State Affordable Housing Corporation, Attn: Mindy Green, 2200 E. Martin Luther King Jr. Boulevard, Austin, Texas 78702.

TRD-201206472
David Long
President
Texas State Affordable Housing Corporation
Filed: December 13, 2012

♦ ♦ ♦

Texas Department of Agriculture

Notice Regarding Percentage Volume of Texas Grapes Required by Texas Alcoholic Beverage Code, §16.011

Texas Alcoholic Beverage Code, §16.011 (§16.011), establishes an exception to the bar on the sale of wine in dry areas for wineries that sell or dispense wine that contains less than seventy-five percent (75%), by volume, of Texas grown grapes or fruit. Texas Agriculture Code, §12.039 (§12.039), provides that the commissioner of agriculture may reduce the percentage by volume of fermented juice of grapes or other fruit grown in this state that wine containing that particular variety of grape or other fruit must contain under §16.011.

Due to state budget cuts, the department did not receive the Texas Grape Production and Demand Report from the Texas Wine Marketing Research Institute (TWMRI), as provided for in §12.039. The department has, however, reviewed the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS) grape production forecast report (forecast report), which was issued on August 10, 2012. (USDA National Agricultural Statistics Service, "Crop Production," August 10, 2012, and "Noncitrus Fruits and Nuts," annual summaries, 2007-2011). The forecast report is based on a survey of Texas grape growers statewide. Upon review of the USDA-NASS forecast report and data, the department has determined that there is sufficient information to utilize the statutorily-established percentage of Texas grown grapes and fruit that is required to be in wine produced by wineries located in dry areas of Texas for the 2013 calendar year, which is seventy-five percent (75%). This is based upon several factors. First, since the TWMRI was not provided to the department to aid in the department's determination, the department looked to the USDA-NASS for grape production information. Secondly, the USDA-NASS forecast report indicates that the production forecast for Texas for 2012 is 8,800 tons, which is 65% higher than the 2011 production of 5,330 tons, and 49% higher than the previous 5-year average (2007-2011) of 5,900 tons. Thirdly, the percentage rate was last set at 75% in 2010, when wine grape production reached 8,900 tons.

Additionally, as noted below, for situations where a winery is not able to obtain enough Texas grapes to meet their needs, the department will review individual appeals for further reduction of the level set for calendar year 2013. The USDA grape forecast report issued in August 2012, is preliminary and will be updated in January 2013 and issued as the annual USDA-NASS grape production report. TDA staff will review the USDA-NASS annual report when it becomes available and submit to the commissioner at that time a recommendation for any needed adjustments to the 75% rate, as a result of the USDA-NASS data. The commissioner will review any such recommendation and make adjust-

ments to the rate, as deemed necessary. Any change to the rate will be published in the *Texas Register* and posted on the Texas Department of Agriculture website.

In accordance with §12.039(g), if a winery in a dry area of Texas finds that a particular variety of grape or other fruit is not available to a level sufficient for the winery to meet the winery's planned production for the relevant year, the winery may submit documentation or other information requested by the commissioner substantiating that the winery has not been able to acquire those grapes or other fruit grown in this state in an amount sufficient to meet the winery's production needs and to comply with requirements of §16.011. If the commissioner determines that there is not a sufficient quantity of that variety of grapes or other fruit grown in this state to meet the needs of that winery, the commissioner may reduce the percentage requirement for wine bottled during the remainder of the calendar year that contains that variety of grape or fruit.

TRD-201206567
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: December 19, 2012

♦ ♦ ♦

Request for Proposals: Fiscal Year 2013 Medicare Rural Hospital Flexibility Program - Rural Health Feasibility Grant Program

The Texas Department of Agriculture (TDA) is accepting proposals for the Rural Health Feasibility Grant Program (Program). The Program is designed to support financial feasibility studies for eligible small rural hospitals considering Critical Access Hospital (CAH) designation. Proposals must be received by TDA by the close of business (5:00 p.m. CST) on Monday, January 21, 2013.

Funding Parameters. Grant funds awarded for financial feasibility studies for non-CAH rural hospitals may be used **only** to pay for the actual cost of a study, service or assessment. No other uses of the grant funds are permitted, including costs incurred for "in-house" work performed by any staff or representative of the recipient facility. Selected proposals will receive funding on a **cost reimbursement** basis. Funds will not be advanced to grantees.

Eligibility. Rural Texas hospitals that are located more than 35 miles from another hospital are eligible to apply for funds to determine the impact and benefit of CAH status and conversion. In the case of mountainous terrain or in areas with only secondary roads available, the CAH must be located more than a 15-mile drive from any hospital or other CAH. A CAH may qualify for application of the "secondary roads only" criterion if there is a combination of primary and secondary roads between it and any hospital or other CAH, so long as more than 15 of the total miles from the hospital or other CAH consists of areas in which only secondary roads are available.

For the purpose of the feasibility study, a hospital is considered "rural" if it is located in a non-Metropolitan Statistical Area (non-MSA), as defined by the Office of Management and Budget (OMB).

Submitting an Application. Applications are currently being accepted, and must be submitted on the form provided by TDA by the submission deadline. Application and guidance documents are available on TDA's website at http://www.texasagriculture.gov/GrantsServices/RuralEconomicDevelopment/StateOfficeofRuralHealth/RuralHealthGrants.aspx, or upon request from TDA by calling (512) 463-9905.

Applications must be complete and have all required documentation to be considered. TDA reserves the right to request additional information or documentation to determine eligibility. Applications must be signed by an authorized representative.

Applications may be submitted by mail or hand-delivered to TDA headquarters in Austin, Texas. If mailing the application, make sure it is properly marked.

Deadline for Submission of Responses. A complete, hard copy application with signature must be received by TDA by the close of business **(5:00 p.m. CST) on Monday, January 21, 2013.** *See mailing information below.*

Complete applications with signature must be submitted to:

Mailing Address: Texas Department of Agriculture, State Office of Rural Health, P.O. Box 12847, Austin, Texas 78711.

Or (for overnight delivery):

Street Address: Texas Department of Agriculture, State Office of Rural Health, 1700 N. Congress, 11th Floor, Austin, Texas 78701.

TDA will send an acknowledgement receipt by email indicating the response was received.

Assistance and Questions. For questions regarding submission of the proposal and TDA documentation requirements, please contact Megan Cody, FLEX Program Coordinator, at (512) 463-9905 or by email at Megan.Cody@TexasAgriculture.gov.

Texas Public Information Act. Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201206489
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: December 14, 2012

♦ ♦ ♦

Office of the Attorney General

Request for Proposal

This Request for Proposal is filed pursuant to Texas Government Code §2254.021 *et seq.*

The Office of the Attorney General of Texas ("the OAG") requests that professional consultants with documented expertise and experience in the field of indirect cost recovery and cost allocation plans for governmental units submit proposals to prepare an Indirect Cost Plan for State Fiscal Year 2012 ("FY12") (based on actual expenditures as presented in the OAG's Annual Financial Report (AFR) and to analyze and update standardized billing rates for legal services provided by the OAG. In accordance with Texas Government Code §2254.029(b), the OAG hereby discloses that similar services related to indirect cost plans and legal billing rates covering earlier fiscal years have been previously provided to the OAG by a consultant.

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. Currently, the OAG is recouping its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("DHHS").

The OAG also provides legal services to other state agencies. The consultant selected will be responsible for analyzing the existing billing

rates and actual costs and then updating the legal services rates for use in FY14.

The consultant selected to prepare the Indirect Cost Plan and to develop current, standardized legal billing rates must demonstrate the necessary qualifications and experience listed in the "QUALIFICATIONS" section. The successful consultant will also be required to perform the services and generate the reports listed in the "SCOPE OF SERVICES" section. The acceptance of a proposal by the OAG, made in response to this Request for Proposal, will be based on the OAG's evaluation of the competence, knowledge, and qualifications of the consultant, in addition to the reasonableness of the proposed fee for services. If other considerations are equal, the OAG will give preference to a consultant whose principal place of business is in Texas or who will manage the consulting contract wholly from an office in Texas. The total contract award will not exceed Forty Thousand and NO/100 Dollars ($40,000.00).

SCOPE OF SERVICES

The successful consultant will be required to comply with the consulting services, performances, terms, and conditions as described in the draft "Consulting Services Contract Between the Office of the Attorney General and Name of Contractor" which is hereby incorporated into the Request for Proposal as Addendum A.

Addendum A

CONSULTING SERVICES CONTRACT
BETWEEN
THE OFFICE OF THE ATTORNEY GENERAL
AND
NAME OF CONTRACTOR

STATE OF TEXAS	§	**OAG CONTRACT NO. 13-XXXXX**
TRAVIS COUNTY	§	

THIS CONTRACT is entered into by and between the Office of the Attorney General (hereinafter referred to as "OAG") and NAME OF CONTRACTOR. (hereinafter referred to as "Contractor") and collectively referred to as the Parties. The Parties, in consideration of their respective promises, agreements, and covenants contained and recited herein, hereby agree to the mutual obligations and performances described in this contract as follows.

SECTION 1. CONTRACT PERIOD. This contract shall commence on the date the final signature is affixed hereto and shall terminate on August 31, 2013 or upon the completion of Contractor's work described herein, whichever occurs last, unless terminated earlier pursuant the terms of this contract. If the performance(s) continues beyond August 31, 2013, then the Parties agree the OAG's obligation to pay is specifically contingent upon availability of legislative appropriations for the purpose(s) in the contract. The OAG may, at its sole discretion, renew the contract for up to three additional one year periods.

SECTION 2. AUTHORITY. The performances required of Contractor by this contract constitute "consulting services" and are governed by the requirements applicable to consulting services or major consulting services as described and defined in the TEX. GOV'T CODE §§ 2254.021- .040.

SECTION 3. SERVICES TO BE PERFORMED BY CONTRACTOR. Contractor shall perform the consulting services in accordance with the terms and conditions herein:

3.1 RECOMMENDATIONS. Contractor shall make recommendations throughout the Term of this Contract to improve the integration and reconciliation of indirect and direct billing methodologies.

3.2 Indirect Cost Allocation Plan. Contractor will prepare an Indirect Cost Allocation Plan based upon actual expenditures as presented in the OAG's Annual Financial Report (AFR) for FY 2012.

3.2.1 Planning. Contractor shall plan for the review of the methodologies, rates and obtain the necessary information, raw cost data, and statistical data necessary to identify allocable costs for evaluating, preparing, submitting and negotiating the final Indirect Cost Allocation Plans.

3.2.2 Review the Indirect Cost Methodologies and Develop Rates. Contractor shall review the indirect cost methodologies of the OAG to determine areas of cost recovery which will maximize revenue from the recovery of indirect costs. Contractor shall also develop new indirect cost rates throughout the OAG, as appropriate.

3.2.3 Prepare Indirect Cost Allocation Plan. After Contractor completes work applicable to the *Review the Indirect Cost Methodologies and Develop Rates*, Contractor will prepare an

Indirect Cost Allocation Plan in accordance with OMB Curricular A-87 that satisfy the requirements of the United States Department of Health & Human Services, Region VI, DCA (hereinafter referred to as "DHHS"), based upon actual expenditures as presented in the OAG's AFR of the OAG for FY 2012. Contractor shall perform all necessary services to prepare and obtain approval for the Indirect Cost Allocation Plan to include but not limited to:

3.2.3.1	Identify the sources of financial information;
3.2.3.2	Inventory all federal and other programs administered by the OAG;
3.2.3.3	Classify all OAG divisions;
3.2.3.4	Determine administrative divisions;
3.2.3.5	Determine allocation bases for allotting services to benefitting divisions;
3.2.3.6	Develop allocation data for each allocation base;
3.2.3.7	Prepare allocation worksheets based upon actual FY12 expenditures which includes a reconciliation to the OAG AFR;
3.2.3.8	Summarize costs by benefitting division;
3.2.3.9	Collect cost data for all of the programs included in the inventory of federal and other programs administered by the OAG;
3.2.3.10	Determine indirect cost rates throughout the OAG on an annual basis;
3.2.3.11	Acquire and include information on costs billed or allocated internally to programs and funding sources.
3.2.3.12	Prepare and present draft Indirect Cost Plan to the OAG for review and comment *no later than April 8, 2013*;
3.2.3.13	Formalize the Actual FY12 Indirect Cost Plan and present it to the DHHS *no later than April 30, 2013*; and
3.2.3.14	Negotiate the Indirect Cost Plan's approval with DHHS *no later than August 30, 2013.*

3.3 Legal Billing. Contractor will prepare FY 2014 billing rates for legal services and reconcile FY 2012 legal billing rates with actual costs of legal services. The FY 2014 billing rates for legal services will be used to directly bill state agencies and other users of the legal services of the OAG.

3.3.1 Planning. Contractor shall plan for the review of the methodologies, rates and obtain the necessary information, raw cost data, and statistical data necessary to reconcile the existing rates with actual costs and to prepare an updated report regarding the standardized Legal Billing Rates.

3.3.2 Reconcile FY 2012 Legal Billing Rates with Actual Costs. Contractor will reconcile FY 2012 legal billing rates with actual costs of the OAG in providing the legal services and provide to the OAG a report of that reconciliation;

3.3.3 FY 2014 Billing Rates for Legal Services and Reconciliation Report. Contractor shall develop and present a report to the OAG for the FY 2014 billing rates for legal services which will be used to directly bill state agencies and other users of the legal services of the OAG. Contractor shall also prepare a final report which reconciles FY 2012 billing rates with actual costs for the OAG. Contractor will perform all services necessary to prepare and deliver the reports to the OAG. Examples of the types of services to be performed are:

3.3.3.1	Review current criteria used by the OAG for charging various agencies;
3.3.3.2	Determine the types of legal services provided to the agencies;
3.3.3.3	Compile direct hours for each type of service;

3.3.3.4 Determine effort reporting requirements;

3.3.3.5 Reexamine billing rate options;

3.3.3.6 Determine the actual cost of services;

3.3.3.7 Analyze and confirm revenues and cost analyses;

3.3.3.8 Prepare and present a draft Legal Services Billing Schedule for FY 2012 actual costs and legal billing rates to be used in FY 2014 (based on FY 2012 actual costs including roll forward adjustments) to the OAG *no later than July 29, 2013*; and

3.3.3.9 Formalize the FY 2014 Legal Services Billing Schedule *no later than August 30, 2013.*

3.4 DHHS Approval. The Parties agree that one of the primary purposes of this Contract is for the OAG to have the Indirect Cost Allocation Plan and Legal Billing Rates approved by the DHHS. Therefore Contractor will negotiate the approval of the final FY 2012 Indirect Cost Allocation Plan and the FY 2014 Legal Billing Rates with DHHS, keeping the OAG fully informed about all significant developments relating to DHHS approval.

3.5 Delivery of Final Approved Plans. Contractor will deliver to the OAG ten [10] copies of the approved Indirect Cost Allocation Plan. Contractor will also deliver to the OAG eight [8] copies of the final FY 2014 Legal Billing Rates Report and eight [8] copies of the detailed report reconciling FY 2012 legal billing rates with actual costs.

3.6 Provision of Audit Assistance. Regardless of time period, Contractor will respond to questions and defend them should the indirect cost plan, indirect cost rates or legal billing schedules or methodologies be questioned or audited.

SECTION 4. SCHEDULE FOR PERFORMANCE OF SERVICES BY CONTRACTOR.

4.1 Time Is of the Essence. Time is of the essence in the rendering of services required by this contract.

4.2 Indirect Cost Allocation Plan Schedule.

4.2.1 Submission of Draft Plan. Prepare and present draft Indirect Cost Allocation Plan to the OAG for review and comment *no later than April 6, 2013.*

4.2.2 Submission to DHHS. Formalize the Actual FY12 Indirect Cost Plan and present it to the DHHS *no later than April 30, 2013*; and

4.2.3 DHHS Negotiation and Final Approval. Contractor agrees to perform all work required to accomplish negotiation and approval by the DHHS of the Indirect Cost Allocation Plan *no later than August 30, 2013*, unless the OAG agrees in writing to extend that date.

4.3 Legal Billing Services and Report(s) Schedule.

4.3.1 Schedule for Delivery of Report Reconciliation of the Existing Rates and Actual Costs. Contractor agrees to perform and complete all work required to reconcile existing billing rates with actual costs and for delivering to the OAG a detailed report which reconciles the

existing rates and actual costs *no later than August 30, 2013*, unless the OAG agrees in writing to extend that date.

4.3.2 Schedule for Delivery of Final Report for Standardized Legal Billing Rates. Contractor agrees to perform all work required to update the standardized Legal Billing Rates, including the submission of a final report to the OAG regarding those updated rates, as outlined above and in the request for proposal referred to above, *no later than August 30, 2013*, unless the OAG agrees in writing to extend that date.

4.4 Target Date for Completion of All Contractor's Obligations. The target date for completion of all of the Contractor's obligations under the terms of this Contract, including DHHS approval of the FY 2012 Indirect Cost Allocation Plan, is *August 30, 2013*.

4.5 Extension of Performance Dates. The OAG acknowledges that due to circumstances beyond its control, Contractor may not be able to obtain DHHS approval by August 30, 2013. In the event that Contractor is unable to obtain DHHS approval by August 30, 2013, Contractor shall so notify the OAG and the contract will hereby be extended until such time that Contractor obtains the DHHS approval.

SECTION 5. INCORPORATED DOCUMENTS. The following documents may describe the required performances in more detail and are incorporated herein in their entirety in descending order of precedence:

5.1 The Request for Proposal dated December 28, 2012, issued by the OAG; and

5.2 The Proposal to Provide Services dated MONTH DATE, 2013, issued by the Contractor.

Any conflict between the incorporated documents will be resolved according to the order of precedence. To the extent of any conflict between the terms of this contract and the incorporated documents, the terms of this contract will control.

SECTION 6. COMPENSATION. The total amount of compensation to be paid Contractor in consideration of full, satisfactory and timely performance of all its obligations as set forth in this agreement shall not exceed _____ **($) DOLLARS**. The parties agree to abide by the following payment schedule.

6.1 Indirect Cost Allocation Plan. Upon receipt and approval by the OAG of the completed FY 2012 Indirect Cost Allocation Plan, including the submission of the plan to DHHS, the Contractor shall submit an invoice in an amount not to exceed _____ **($) DOLLARS.**

6.2 Executed Negotiation Agreement from DHHS. Upon receipt and acceptance by the OAG of an executed Negotiation Agreement from DHHS for the fixed FY 2014 Indirect Cost Allocation Rate, including the delivery of the final approved plan to the OAG, the Contractor shall submit an invoice in an amount not to exceed _____ **($) DOLLARS.**

6.3 Final Report for Standardized Legal Billing Rates. Upon receipt and acceptance by the OAG of the completed final report on the updated standardized Legal Billing Rates, including the delivery of the final updated standardized Legal Billing Rates Report and the detailed report reconciling FY 2012

legal billing rates with actual costs, the Contractor shall submit an invoice in an amount not to exceed _____ **($) DOLLARS.**

The form of any invoice submitted under this section must comply with the specifications of the Attorney General and must be submitted in the manner and with the documentation the Attorney General may require.

Upon acceptance of Contractor's performance and receipt of an acceptable invoice required to be submitted under this section, the OAG shall pay the Contractor said amount in accordance with Chapter 2251 of the Texas Government Code. It is the policy of the OAG to make payment on a properly prepared and submitted invoice within thirty (30) days of any final acceptance of performance.

SECTION 7. TERMINATION.

7.1 Termination for Convenience. The OAG reserves the right to terminate the contract at any time for convenience, in whole or in part, by providing thirty (30) calendar days advance written notice of termination. In the event of such a termination, the contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The OAG shall be liable for payments limited only to the portion of work authorized by the OAG in writing and completed prior to the effective date of termination, provided that the OAG shall not be liable or any work performed that is not acceptable to the OAG and/or does not meet contract requirements. All work products produced by the Contractor and paid for by the OAG shall become the property of the OAG and shall be tendered upon request.

7.2 Termination for Breach. The OAG may, by written notice of material breach to the contractor, terminate this contract, in whole or in part, if the contractor fails to perform in full compliance with the contract requirements. Upon receipt of written notice to terminate, the contractor shall promptly discontinue all services affected (unless the notice directs otherwise) and shall deliver or otherwise make available to the OAG, all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the contractor in performing this contract, whether completed or in progress.

7.3 Termination for Funding. All obligations of the OAG are subject to the availability of legislative appropriations and, for federally funded procurements, to the availability of federal funds applicable to this procurement. The parties acknowledge that funds are not specifically appropriated for this Contract and the OAG's continual ability to make payments under this Contract is contingent upon the funding levels appropriated to the OAG for each particular appropriation period. The OAG will use all reasonable efforts to ensure that such funds are available. The parties agree that if future levels of funding are not sufficient to continue operations without any operational reductions, the OAG, in its discretion, may terminate this Contract, either in whole or in part. In the event of such termination, the OAG will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. The OAG shall make best efforts to provide reasonable written advance notice to Contractor of any such termination. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. OAG shall be liable for payments limited only to the portion of work the OAG authorized in writing and which the Contractor has completed, delivered to the OAG, and which has been accepted by the OAG. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination.

7.4 Ownership of Work Product. Upon the completion, expiration, or termination of the Contract, Contractor grants and assigns to the OAG the exclusive ownership of all works in connection with this contract. Nothing contained herein is intended nor shall it be construed to confer to the OAG any rights to Contractor's proprietary software.

7.5 Dispute Resolution.

7.5.1 The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by the OAG and by Contractor to attempt to resolve any claim for breach of contract made by the Contractor:

7.5.1.1 Contractor's claims for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to Ms. Norma Flores, Director of Budget, or her designate. Said notice shall specifically state that the provisions of Ch. 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of Contractor and the OAG otherwise entitled to notice under the parties' contract. Compliance by Contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

7.5.1.2 The contested case process provided in Chapter 2260, subchapter C, of the Government Code is Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by OAG if the parties are unable to resolve their disputes under subsection 7.4.1.

7.5.1.3 Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by OAG nor any other conduct of any representative of OAG relating to the contract shall be considered a waiver of sovereign immunity to suit.

7.5.2 The submission, processing, and resolution of Contractor's claim are governed by the published rules (1 TAC § 68 et seq.) adopted by the OAG pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

7.5.3 Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Contractor, in whole or in part.

SECTION 8. CERTIFICATIONS OF CONTRACTOR. By agreeing to and signing this Contract, Contractor hereby makes the following certifications and warranties:

8.1 Delinquent Child Support Obligations. Under Section 231.006 of the Texas Family Code, Contractor certifies that it and/or the business entity named in this Contract is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

8.2 Contractor Participation in Development of Criteria. The Contractor certifies that neither it nor its employee(s), agents, or representatives have participated in the development of specific criteria for the award of this contract and/or in the selection of the successful offeror of this contract.

8.3 Previous Employment with the Office of the Attorney General. Contractor certifies that none of the people who will perform the services under this Contract have been employed by the OAG within the previous twelve (12) months.

8.4 Conflict of Interest. Contractor certifies that neither it nor the personnel or entities employed in rendering services under this Contract have, nor shall they knowingly acquire, any interest that would be adverse to or conflict in any manner with the performance of Contractor's obligations under this Contract.

8.5 Gifts to Public Servant. Contractor warrants that it has not given nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the award of this Contract.

8.6 Corporate Franchise Tax. By signing this Contract, Contractor certifies that its Texas franchise tax payments are current or that it is exempt from, or not subject to, such tax.

8.7 No Claims. Contractor certifies that Contractor does not have any potential or existing claims against or unresolved audit exceptions with the State of Texas or any agency of the State of Texas.

8.8 Debt to State. Contractor acknowledges and agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, any payment's Contractor is owed under this Contract will be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Contractor owes the State of Texas until the debt or delinquent taxes are paid in full.

8.9 Buy Texas. With respect to all services, if any, purchased pursuant to this Contract, Contractor represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.

8.10 Effect of Certifications. The Contractor, by signing this contract, certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

SECTION 9. GENERAL TERMS AND CONDITIONS.

9.1 Independent Contractor/Indemnification. Contractor agrees and acknowledges that during the existence of this contract, it acts as a consultant and is furnishing services in the capacity of an independent contractor. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, and representatives during the performance of this agreement. Contractor agrees to indemnify and hold harmless the OAG, its employees and designees, and the State of Texas from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses, which arise from or are occasioned by the negligence, misconduct, or wrongful act or omission of contractor, its employees, representatives, agents or subcontractors in its performance under this contract.

In the event of loss, damage, or destruction of any property of the OAG due to the negligence or misconduct, wrongful act or omission on the part of the Contractor, its employees, agents, representatives, or subcontractors, the Contractor shall indemnify the Attorney General and pay the full cost of either repair, reconstruction, or replacement of the property, at the Attorney General's election. Such cost shall be due and payable by the Contractor within ten calendar days after the date of the Contractor's receipt from the Attorney General of a written notice of the amount due.

The Contractor shall indemnify and hold harmless the OAG against any claim of copyright or patent infringement arising in connection with the performances required of the Contractor pursuant to this contract. The Contractor shall be liable to pay all costs, damages, and attorneys' fees incurred by the OAG as a result of any claim for the infringement of any United States or internationally protected patents or copyrights arising from the use by the Contractor or the OAG or its employees or designees of any equipment, materials, information, or ideas employed or furnished by the Contractor in connection with the performances called for in this contract. The Contractor and the OAG agrees to furnish timely written notice to each other of any such claim of copyright or patent infringement.

9.2 Assistants. The Contractor agrees that any person hired or engaged by the Contractor and who assists in performing the services agreed to herein shall not be considered employees or agents of the OAG. The Contractor shall be responsible for any payments and other claims due such persons. Further, the Contractor agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The OAG shall not be liable to the Contractor, its employees, agents, or others for the provision of unemployment insurance and/or workers' compensation.

9.3 Confidentiality of Information and Records. During the term of this contract, as well as thereafter, Contractor agrees to keep all information obtained from the OAG – if such information is not otherwise open to the public under Chapter 552, Texas Government Code -- confidential, and will not use any such information to the detriment of the OAG or its officers, employees, or clients at any time. All information in whatever form prepared by the Contractor for the OAG pursuant to this contract shall not be disclosed by Contractor without the prior written approval of the OAG.

9.4 Assignment.

9.4.1 Contractor Assignment. Contractor may not assign this Contract or any of its rights or obligations hereunder (including, without limitation, rights and duties of performance) to any third party or entity, without the prior written consent of the OAG. Any attempted assignment without the OAG's prior written consent is void. The initiation of bankruptcy proceeding by or on behalf of Contractor and/or any involuntarily assignment or other assignment by operation of law shall result in the automatic termination of this Contract.

9.4.2 Antitrust. Contractor hereby assigns to the OAG any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).

9.5 Subcontracting. In the event that the Contractor should determine that it is necessary or expedient to subcontract for any of the performances herein, prior to executing a subcontract, the Contractor shall submit a copy of the proposed subcontract to the OAG and shall obtain the written approval of the OAG for subcontracting the subject performances. The Contractor, in subcontracting for any performances specified herein, expressly understands and agrees that the OAG shall not be liable in

any manner to the Contractor's subcontractor(s).

In no event shall this section or any other provision of this contract be construed as relieving the Contractor of the responsibility for ensuring that all performances rendered under this contract, and any subcontracts thereto, are rendered in compliance with all of the terms of this contract.

9.6 Media Releases or Pronouncements. The Contractor understands that the OAG does not endorse any vendor, commodity, or service. Neither the Contractor, its employees, representatives nor other agents or subcontractors may issue any media release, advertisement, publication, or public pronouncement which pertains to this contract or the services or project to which this contract relates or which mentions the OAG without the prior written approval of the OAG.

9.7 Amendments. This contract may be amended only upon written agreement by the parties.

9.8 Applicable Law and Venue. This Contract is made and entered into in the State of Texas, and this Contract and all disputes arising out of or relating to the Contract and/or the Work Orders shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements.

Contractor agrees that the OAG and/or the State do not waive any immunity (including, without limitation, sovereign immunity). Contractor further agrees that any properly allowed litigation arising out of or in any way relating to this Contract and/or any Work Order shall be commenced exclusively in the state district courts of Travis County, Texas. Contractor thus hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the state district courts of Travis County, Texas for the purpose of prosecuting and/or defending such litigation. Contractor hereby waives and agrees not to assert: (a) that Contractor is not personally subject to the jurisdiction of the state district courts of Travis County, Texas, (b) that the suit, action or proceeding is brought in an inconvenient forum, (c) that the venue of the suit, action or proceeding is improper, or (d) any other challenge to jurisdiction or venue.

9.10 Tex. Gov't Code § 2262.003. Required Contract Provision Relating to Auditing. Contractor understands that acceptance of funds under this contract, acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Contractor will reimburse the State of Texas for all costs associated with enforcing this provision.

9.11 Signatory. The Parties agree the signatories to this Contract are acting in their official capacities. Having agreed to the terms herein, the undersigned signatories hereby represent and warrant that they have actual or delegated authority to sign this Contract.

9.12 Severability/Interpretation. The fact that a particular provision is held under any applicable law to be void or unenforceable will in no way affect the validity of other provisions and the Contract will continue to be binding on both parties. Any provision that is held to be void or unenforceable will be replaced with language that is as close as possible to the intent of the original provision. Any vague, ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of the Contract.

9.13 Written Notice Delivery

9.13.1 Any notice required or permitted to be given under this Contract by the OAG to the Contractor shall be in writing and shall be deemed to have been given immediately if delivered by fax, e-mail, or in person to the Contractor as set forth in this section. Any notice required or permitted to be given under this Contract by certified mail return receipt requested shall be deemed to have been given on the date of attempted or actual delivery to the recipient if addressed to the receiving party at the address specified in this section.

9.13.2 Contractor's Mailing Address. The mailing address of the Contractor for all purposes under this Contract and for all notices hereunder shall be:

NAME OF CONTRACTOR
STREET ADDRESS
CITY, STATE ZIP CODE

9.13.3 OAG's Address. The address of the OAG for all purposes under this Contract and for all notices hereunder shall be sent by registered or certified mail with return receipt to:

Office of the Attorney General
Post Office Box 12548
Austin, Texas 78711-2548
Attn: Ms. Norma Flores
Director, Budget Division

SECTION 10. BACKGROUND PROVISION. Pursuant to Texas Government Code Sections 411.127-1271, the OAG may elect to obtain criminal history information from the Texas Department of Public Safety, the Federal Bureau of Investigation, or another law enforcement agency about any person or employee of an entity that proposes to enter into a contract, or who has entered a contract, to supply goods and services to the agency. This authorization includes subcontractors and their employees. If requested, the vendor shall provide identifying data necessary to facilitate the performance of initial and periodic criminal background checks on its employees and the employees of any subcontractor. In its sole discretion, the OAG may reject the assignment or restrict the access of personnel on the basis of reported criminal history, and is prohibited by law from disclosing the results of any criminal background check to the vendor.

SECTION 11. LIMITATION OF LIABILITY

11.1 Contractor's Liability. The OAG agrees that Contractor's total liability to the OAG for any and all damages whatsoever arising out of or in any way related to this contract from any cause, including but not limited to contract liability or Contractor's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed **FOUR HUNDRED THOUSAND ($400,000) DOLLARS**. In no event shall Contractor be liable for indirect, incidental, or consequential damages, regardless of the legal theory under which such damages are sought.

11.2 OAG's Liability. The Contractor agrees that OAG's total liability to the Contractor for any and all damages whatsoever arising out of or in any way related to this contract from any cause, including but

not limited to contract liability or OAG's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed _____ **($) DOLLARS.** In no event shall the OAG be liable for indirect, incidental, or consequential damages, regardless of the legal theory under which such damages are sought.

IN WITNESS HEREOF, THE PARTIES HAVE SIGNED AND EXECUTED THIS CONTRACT IN MULTIPLE COUNTERPARTS.

OFFICE OF THE ATTORNEY GENERAL	NAME OF CONTRACTOR
_____	_____
NAME Deputy for Administration	NAME OF REPRESENTATIVE, TITLE OF REPRESENTATIVE
Date:	Federal Tax Identification No. _____ Date:

The selected consultant will accumulate and analyze all data that are required. The OAG is not expected to provide any staff resources to the selected consultant. The OAG will provide a liaison with staff within the OAG and with other state agencies, as appropriate.

QUALIFICATIONS

Each individual, company, or organization submitting a proposal must include all of the references and financial status information as specified within this Request for Proposal (see the section below titled "References and Financial Condition") at the time of opening or it will be disqualified. Each consultant that submits a proposal must present evidence or otherwise demonstrate to the satisfaction of the OAG that such entity:

1. Has the expertise to prepare and successfully negotiate the type of Indirect Cost Plan described above;

2. Has a thorough understanding of cost allocation issues and has the expertise in the preparation of Indirect Cost Plans at the state agency level;

3. Has a thorough understanding of legal services billing procedures and has the expertise in the preparation of a Legal Services Billing Schedule; and

4. Can develop and execute the Indirect Cost Plan and Legal Services Billing Schedule within the required time frames as described in Addendum A.

Please provide evidence of the above qualifications and a proposal which includes:

1. A detailed description of the plan of action to fulfill all of the requirements as described in Addendum A;

2. Detailed information on the consultant staff to be assigned to the project; and

3. The proposed fee amount for provision of the desired services.

A signed original and five (5) copies of the proposal must be received in the OAG Procurement Division, 300 West 15th Street, Third Floor, Austin, Texas 78701, no later than 3:00 p.m., Central Standard Time, January 28, 2013. Any proposal received after the specified time and date will not be given consideration. Conditioned on the OAG's receipt of the requisite finding of fact from the Governor's Budget and Planning Office pursuant to Texas Government Code §2254.028, the OAG anticipates entering into the resultant contract on or about February 15, 2013.

Proposals should be sealed and clearly marked with the specified time and date and the title, "Proposal for Consulting Services for an Indirect Cost Recovery/Cost Allocation Plan and Legal Services Billing Schedule for the OAG".

REFERENCES AND FINANCIAL CONDITION

Prospective consultants will provide the names of at least three (3) different references meeting the following criteria:

1. The reference company or entity must have engaged the prospective consultant for the same or similar services as those to be provided in accordance with the terms of this Request for Proposal;

2. The services must have been provided by the prospective consultant to the reference company or entity within the five (5) years preceding the issuance of this Request for Proposal;

3. The reference company or entity must not be affiliated with the prospective consultant in any ownership or joint venture arrangement;

4. References must include the company or entity name, address, contact name, and telephone number for each reference. The OAG may not be used as a reference. The contact name must be the name of a senior representative of the reference company or entity who was directly responsible for interacting with the prospective consultant throughout the performance of the engagement and who can address questions about the performance of the prospective consultant from personal experience. References will accompany the proposal.

5. The prospective consultant will provide a signed release from liability for each reference provided in response to this requirement. The release from liability will absolve the specified reference company or entity from liability for information provided to the OAG concerning the prospective consultant's performance of its engagement with the reference.

6. The prospective consultant must disclose if and when it has filed for bankruptcy within the last seven (7) years. For prospective consultants conducting business as a corporation, partnership, limited liability partnership, or other form of artificial person, the prospective consultant must disclose whether any of its principals, partners, or officers have filed for bankruptcy within the last seven (7) years.

7. As part of any proposal submission, the prospective consultant must include information regarding financial condition, including income statements, balance sheets, and any other information which accurately shows the prospective consultant's current financial condition. The OAG reserves the right to request such additional financial information as it deems necessary to evaluate the prospective consultant, and by submission of a proposal, the prospective consultant agrees to provide same.

DISCLOSURE

Any individual who provides a proposal for consulting services in response to this Request for Proposal and who has been employed by the OAG or any other state agency(ies) at any time during the two (2) years preceding the tendering of the proposal will disclose in the proposal:

1. The nature of the previous employment with the OAG or any other state agency(ies);

2. The date(s) the employment(s) terminated; and

3. The annual rate(s) of compensation for the employment(s) at the time(s) of termination.

Each consultant that submits a proposal must certify to the following:

1. Consultant has no unresolved audit exceptions(s) with the OAG. An unresolved audit exception is an exception for which the consultant has exhausted all administrative and/or judicial remedies and refuses to comply with any resulting demand for payment.

2. Consultant certifies that the consultant's staff or governing authority has not participated in the development of specific criteria for award of this contract, and will not participate in the selection of consultant(s) awarded contracts.

3. Consultant has not retained or promised to retain an agent or utilized or promised to utilize a consultant who has participated in the development of specific criteria for the award of contract, nor will participate in the selection of any successful consultant.

4. Consultant agrees to provide information necessary to validate any statements made in consultant's response, if requested by the OAG. This may include, but is not limited to, granting permission for the OAG to verify information with third parties, and allowing inspection of consultant's records.

5. Consultant understands that failure to substantiate any statements made in the response when substantiation is requested by OAG may disqualify the response, which could cause the consultant to fail to receive a contract or to receive a contract for an amount less than that requested.

6. Consultant certifies that the consultant's organization has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulation of any state or federal funded program within the past five years nor is it currently prohibited from contracting with a government agency.

7. Consultant certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.

8. Consultant has not given nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

9. Neither the consultant nor the firm, corporation, partnership or institution represented by the consultant, anyone acting for such firm, corporation partnership, or institution has violated the antitrust laws of this State, the Federal antitrust laws nor communicated directly or indirectly its response to any competitor or any other person engaged in such line or business.

10. Under Texas Family Code §231.006 (relating to child support), the consultant certifies that the individual or business entity named in this response is not ineligible to receive a specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

11. If the consultant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the consultant certifies that it either: (a) holds a permit issued by the Texas comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the consultant's business in Texas; or (b) does not sell tangible personal property or services that are subject to the state and local sales and use tax.

12. Consultant certifies that if a Texas address is shown as the address of the vendor, Vendor qualifies as a Texas Bidder as defined in 34 TAC §20.32(68).

13. Consultant certifies that it has not received compensation for participation in the preparation of the specifications for this solicitation.

14. Consultant must answer the following questions:

(a) If an award is issued, do you plan to utilize a subcontractor or supplier for any portion of the contract? If consultant plans to utilize a subcontractor, the subcontractor will comply with the same terms as the consultant as contained in this solicitation and other relevant OAG policy and procedure and the subcontractor must be approved in advance by OAG.

(b) If yes, what percentage of the total award would be subcontracted or supplied by Historically Underutilized Businesses (HUBs)?

(c) If no, explain why no subcontracting opportunities are available or what efforts were made to subcontract part of this project.

(d) Is consultant certified as a Texas HUB?

PAYMENT

Payment for services will be made upon receipt of invoices presented to the OAG in the form and manner specified by the OAG after certification of acceptance of all deliverables.

PROPOSAL PREPARATION AND CONTRACTING EXPENSES

All proposals must be typed, double spaced, on 8 1/2" x 11" paper, clearly legible, with all pages sequentially numbered and bound or stapled together. The name of the prospective consultant must be typed at the top of each page. Do not attach covers, binders, pamphlets, or other items not specifically requested.

A Table of Contents must be included with respective page numbers opposite each topic. The proposal must contain the following completed items in the following sequence:

1. Transmittal Letter: A letter addressed to Ms. Norma Flores (address at the end of this Request for Proposal) that identifies the person or entity submitting the proposal and includes a commitment by that person or entity to provide the services required by the OAG. The letter must state, "The proposal enclosed is binding and valid at the discretion of the OAG." The letter must specifically identify the project for this proposal. The letter must include "full acceptance of the terms and conditions of the Request for Proposal." Any exceptions to the Request for Proposal must be specifically noted in the letter. However, any exceptions to the terms and conditions of the Request for Proposal or subsequently negotiated contract may disqualify the Consultant from further consideration at the OAG's discretion.

2. Executive Summary: A summary of the contents of the proposal, excluding cost information. Address services that are offered beyond those specifically requested as well as those offered within specified deliverables. Explain any missing or other requirements not met, realizing that failure to provide necessary information or offer required service deliverables may result in disqualification of the proposal.

3. Project Proposal

4. Cost Proposal

5. Relevant Technical Skill Statement (with references and vitae)

6. Relevant Experience Statement (with references and vitae)

To be considered responsive, a proposal must set forth full, accurate, and complete information as required by this request. A non-responsive proposal will not be considered for further evaluation. If the requirement that is not met is considered a minor irregularity or an inconsequential variation, an exception may be made at the discretion of the OAG and the proposal may be considered responsive.

A written request for withdrawal of a proposal is permitted any time prior to the submission deadline and must be received by Ms. Norma Flores (address at the end of this Request for Proposal). After the deadline, proposals will be considered firm and binding offers at the option of the OAG.

Preliminary and final negotiations with top-ranked prospective consultants may be held at the discretion of the OAG. The OAG may decide, at its sole option and in its sole discretion, to negotiate with one, several, or none of the prospective consultants submitting proposals pursuant to this request. During the negotiation process, the OAG and any prospective consultant(s) with whom the OAG chooses to negotiate, may adjust the scope of the services, alter the method of providing the services, and/or alter the costs of the services so long as the changes are mutually agreed upon and are in the best interest of the OAG. Statements made by a prospective consultant in the proposal packet or in other appropriate written form will be binding unless specifically changed during final negotiations. A contract award may be made by the OAG without negotiations if the OAG determines that such an award is in the OAG's best interest.

All prospective consultants of record will be sent written notice of which, if any, prospective consultant(s) is selected for the contract award on or about February 22, 2013, or within ten (10) days of making an award, whichever is later.

All proposals are considered to be public information subsequent to an award of the contract. All information relating to proposals will be subject to the Public Information Act, Texas Government Code Annotated, Chapter 552, after the award of the contract. All documents will be presumed to be public unless a specific exception in that Act applies. Prospective consultants are requested to avoid providing information which is proprietary, but if it is necessary to do so, proposals must specify the specific information which the prospective consultant considers to be exempted from disclosure under the Act and those pages or portions of pages which contain the protected information must be clearly marked. The specific exemption which the prospective consultant believes protects that information must be cited. The OAG will assume that a proposal submitted to the OAG contains no proprietary or confidential information if the prospective consultant has not marked or otherwise identified such information in the proposal at the time of its submission to the OAG.

Pursuant to Texas Government Code §§411.127 - 1271, the OAG may elect to obtain criminal history information from the Texas Department of Public Safety, the Federal Bureau of Investigation, or another law enforcement agency about any person or employee of an entity that proposes to enter into a contract, or who has entered a contract, to supply goods and services to the agency. This authorization includes subcontractors and their employees. If requested, the vendor shall provide identifying data necessary to facilitate the performance of initial and periodic criminal background checks on its employees and the employees of any subcontractor. In its sole discretion, the OAG may reject the assignment or restrict the access of personnel on the basis of reported criminal history, and is prohibited by law from disclosing the results of any criminal background check to the vendor.

The OAG has sole discretion and the absolute right to reject any and all offers, terminate this Request for Proposal, or amend or delay this Request for Proposal. The OAG will not pay any cost incurred by a prospective consultant in the preparation of a response to this Request for Proposal and such costs will not be included in the budget of the prospective consultant submitted pursuant to this Request for Proposal. The issuance of this Request for Proposal does not constitute a commitment by the OAG to award any contract. This Request for Proposal and any contract which may result from it are subject to appropriation of State and Federal funds and the Request for Proposal and/or contract may be terminated at any time if such funds are not available.

The OAG reserves the right to accept or reject any or all proposals submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any proposal to the OAG. The OAG is under no legal obligation to enter into a contract with any offer or of any proposal on the basis of this request. The OAG intends any material provided in this Request for Proposal only and solely as a means of identifying the scope of services and qualifications sought.

The State of Texas assumes no responsibility for expenses incurred in the preparation of responses to this Request for Proposal. All expenses associated with the preparation of the proposal solicited by this Request for Proposal will remain the sole responsibility of the prospective consultant. Further, in the event that the prospective consultant is engaged to provide the services contemplated by this Request for Proposal, any expenses incurred by the prospective consultant associated with the negotiation and execution of the contract for the engagement will remain the obligation of the consultant.

Please address responses to:

Ms. Norma Flores

Budget Division

Office of the Attorney General of Texas

300 W. 15th Street, 12th Floor

Austin, Texas 78701

phone: (512) 475-4497

TRD-201206521
Katherine Cary
General Counsel
Office of the Attorney General
Filed: December 17, 2012

♦ ♦ ♦

Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - May 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 May 2012 is $80.12 per barrel for the three-month period beginning on February 1, 2012, and ending April 30, 2012. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of May 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 May 2012 is $1.86 per mcf for the three-month period beginning on February 1, 2012, and ending April 30, 2012. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of May 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 May 2012 is $94.72 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 May 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 May 2012 is $2.49 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 May 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-201206435
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: December 12, 2012

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Certification of the Average Taxable Price of Gas and Oil - November 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 November 2012 is $70.58 per barrel for the three-month period beginning on August 1, 2012, and ending October 31, 2012. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of November 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 November 2012 is $2.47 per mcf for the three-month period beginning on August 1, 2012, and ending October 31, 2012. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of November 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 November 2012 is $86.73 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 November 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 November 2012 is $3.69 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 November 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-201206436
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: December 12, 2012

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Notice of Contract Amendment

The Texas Comptroller of Public Accounts (Comptroller) announces the amendment of a consulting services contract with StatCom, 3399 F.M. 102N, P.O. Box 427, Eagle Lake, Texas 77434 (Contractor), awarded under Request for Proposals (RFP 202a) under which the Contractor advises Comptroller on statistical issues and provides other related services in connection with Comptroller's Annual Property Value Study. The amendment adds $45,000.00 to the contract for a new total amount of not to exceed $90,000.00. The term of the contract is September 14, 2011 through August 31, 2013. The reports will be submitted under this contract on or before August 31, 2013.

The notice of request for proposals was published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3975). The notice of award was published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6530).

TRD-201206466
Jason Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: December 13, 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, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/24/12 - 12/30/12 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/24/12 - 12/30/12 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/13 - 01/31/13 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/13 - 01/31/13 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-201206522
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 18, 2012

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Credit Union Department

Application for a New Charter

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application for a new charter was received for Jafari No-Interest Credit Union, Houston, Texas. The proposed new credit union will serve Muslims residing in cities of Houston, Dallas, and Austin who follow the Jafari School, commonly known as Shia Muslims.

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 Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201206547
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 19, 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 Grand Prairie Credit Union, Grand Prairie, Texas, to expand its field of membership. The proposal would permit persons who work at the Dallas County Government Center located at 130 W. Church St., Grand Prairie, Texas 75050, to be eligible for membership in the credit union.

An application was received from Brazos Valley Schools Credit Union (#1), Katy, Texas, to expand its field of membership. The proposal would permit persons who live, worship, work, or attend school within the geographical boundaries of Bellville ISD, Sealy ISD, Hempstead ISD, Waller ISD, or Royal ISD to be eligible for membership in the credit union.

An application was received from Brazos Valley Schools Credit Union (#2), Katy, Texas, to expand its field of membership. The proposal would permit persons who live, worship, work or attend school within the geographical boundaries of Fort Bend ISD, Lamar Consolidated ISD, Needville ISD, Stafford ISD, Brazos ISD, or Katy ISD to be eligible for membership in the credit union.

An application was received from Brazos Valley Schools Credit Union (#3), Katy, Texas, to expand its field of membership. The proposal would permit persons who live, worship, work, or attend school within the geographical boundaries of Bryan ISD, College Station ISD, Navasota ISD, Brenham ISD, Burton ISD, or Giddings ISD to be eligible for membership in the credit union.

An application was received from Texas Bay Area Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, work, attend school, or worship in and businesses located within 10 miles of the office of Texas Bay Area Credit Union located at 12310 West Lake Houston Parkway, Houston, Texas 77044, to be eligible for membership in the credit union.

An application was received from Space City Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school, businesses, and other legal entities located within a 10-mile radius of the following Space City Credit Union branch location: 1030 Independence Parkway South, La Porte, Texas 77571, 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_1. 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-201206546
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 19, 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 application:

Application to Amend Articles of Incorporation - Approved

Midland Teachers Credit Union, Midland, Texas - See the October 26, 2012, issue of the *Texas Register* (37 TexReg 8619).

Application to Amend Field of Membership - Approved

SPCO Credit Union, Houston, Texas - See the July 27, 2012, issue of the *Texas Register* (37 TexReg 5652).

Linkage Credit Union, Waco, Texas - See the October 26, 2012, issue of the *Texas Register* (37 TexReg 8619).

TRD-201206548
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 19, 2012

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Employees Retirement System of Texas

Request for Application Texas Employees Group Benefits Program Health Maintenance Organizations

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 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. HMOs shall provide the level of benefits required in the RFA and meet other requirements.

An HMO wishing to submit an Application to this request must meet at least the following minimum qualifications: 1) have a current Certificate of Authority from the Texas Department of Insurance, 2) have been providing managed care services in the service area for which the Application is made at least since March 1, 2012, and 3) 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.

The RFA will be available on or after January 3, 2013 from ERS' website, and all Applications must be received at ERS by 12:00 noon (CT) on February 7, 2013. To access the RFA from the website, qualified HMOs shall email their request to the attention of ivendor Mailbox at: **ivendorquestions@ers.state.tx.us.** The email request shall include the HMO's full legal name, street address, as well as phone and fax numbers of an immediate HMO contact. Upon receipt of your emailed request, a user ID and password will be issued to the requesting 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.

The ERS Board of Trustees is not required to select the lowest bid but shall take into consideration other relevant criteria, including ability to service contracts, past experience, and financial ability. ERS reserves the right to select none, one, or more than one HMOs per service area when it is determined that such action would be in the best interests of ERS, the GBP, its Participants or the state of Texas.

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-201206441
Tim N. Sims
Acting General Counsel
Employees Retirement System of Texas
Filed: December 13, 2012

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is January 28, 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 C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on January 28, 2013. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: ALAN SKINNER, INCORPORATED dba Skinner Texaco; DOCKET NUMBER: 2012-1733-PST-E; IDENTIFIER: RN102231131; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,250; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Approach Operating LLC; DOCKET NUMBER: 2012-2065-AIR-E; IDENTIFIER: RN104256102; LOCATION: Ozona, Crockett County; TYPE OF FACILITY: natural gas compression plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit (FOP) Number O-2495/Oil and Gas General Operating Permit (GOP) Number 514, Site-wide Requirements (b)(1) and (2), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a permit compliance certification within 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O-2495/Oil and Gas GOP Number 514, Site-wide Requirements (b)(1) and (2), and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $5,125; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(3) COMPANY: BENISH CORPORATION dba Sunnys Mart; DOCKET NUMBER: 2012-2033-PST-E; IDENTIFIER: RN102362738; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: BRAZORIA COUNTY WATER CORPORATION; DOCKET NUMBER: 2012-1618-PWS-E; IDENTIFIER: RN103953956; LOCATION: Liverpool, Brazoria County; TYPE OF FACILITY: public water supply system; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: $450; Supplemental Environmental Project offset amount of $180 applied to Galveston Bay Foundation - Marsh Mania; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Brian Fabre dba Fay Ben Mobile Home Park; DOCKET NUMBER: 2012-1295-PWS-E; IDENTIFIER: RN101247328; LOCATION: Shallowater, Lubbock County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e) and §290.107(e), by failing to timely report the results for triennial metals and minerals monitoring to the executive director; 30 TAC §290.108(e), by failing to timely report the results of quarterly radionuclide monitoring to the executive director; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.107(e), by failing to timely report the results for sexenniel volatile organic compounds monitoring to the executive director; 30 TAC §290.113(e), by failing to timely report the results for triennial Stage I Disinfectant Byproduct monitoring to the executive director; and 30 TAC §290.109(c)(2)(A)(ii) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the month of December 2011; PENALTY: $915; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(6) COMPANY: City of Arlington; DOCKET NUMBER: 2012-1267-WQ-E; IDENTIFIER: RN101385714; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: public water supply; RULE VIOLATED: TWC, §26.121(a)(2), by failing to prevent the discharge of a pollutant into or adjacent to water in the state; PENALTY: $7,125; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Harlingen Waterworks System; DOCKET NUMBER: 2012-0893-MWD-E; IDENTIFIER: RN101613362; LOCATION: Harlingen, Cameron County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010490003, issued April 28, 2006, Interim Effluent Limitations and Monitoring Requirements Number 1, and TPDES Permit Number WQ0010490003, issued March 31, 2011, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations; PENALTY: $16,362; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: City of Pasadena; DOCKET NUMBER: 2012-1604-PST-E; IDENTIFIER: RN102038197; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: emergency generator; RULE VIOLATED: 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (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) and by failing to provide proper release detection for the product piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $6,300; Supplemental Environmental Project offset amount of $5,040 applied to Gulf Coast Waste Disposal Authority - River, Lakes, Bays, and Bayous Trash Bash; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Conoco Phillips Company; DOCKET NUMBER: 2012-1344-AIR-E; IDENTIFIER: RN101649317; LOCATION: Grapevine, Tarrant County; TYPE OF FACILITY: bulk fuel storage terminal; RULE VIOLATED: Federal Operating Permit Number O2743, Special Terms and Conditions Number 10, 30 TAC §122.143(4) and §122.146(2), and Texas Health and Safety Code, §382.085(b), by failing to submit an annual compliance certification within 30 days after the end of the certification period; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Cotulla Fish Hatchery, LLC; DOCKET NUMBER: 2012-1533-PWS-E; IDENTIFIER: RN106201825; LOCATION: Cotulla, La Salle County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(B), and Texas Health and Safety Code, §341.033(d), by failing to conduct routine distribution water sampling for coliform analysis and by failing to provide public notice to the facility's customers for the months of October 2011 - February 2012; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit Disinfectant Level Quarterly Operating Reports to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: $1,863; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(11) COMPANY: Cowtown RV Park, Ltd.; DOCKET NUMBER: 2012-1703-PWS-E; IDENTIFIER: RN101222792; LOCATION: Aledo, Parker County; TYPE OF FACILITY: recreational vehicle park with a public water supply; RULE VIOLATED: 30 TAC §290.45(c)(1)(B)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute (gpm) per unit; 30 TAC §290.45(c)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of at least 10 gallons per unit; 30 TAC §290.45(c)(1)(B)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps with a total capacity of 1.0 gpm per unit; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; and 30 TAC §290.46(f)(2) and §290.45(f)(3)(A)(i)(III), by failing to provide facility records to commission personnel at the time of the investigation; PENALTY: $1,763; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: CS Community Water Supply Corporation; DOCKET NUMBER: 2012-1742-PWS-E; IDENTIFIER: RN101441046; LOCATION: China Spring, McLennan County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine residual concentration throughout the distribution system at all times; PENALTY: $53; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Dallas County Community College District; DOCKET NUMBER: 2012-1805-PST-E; IDENTIFIER: RN102468741; LOCATION: Mesquite, Dallas County; TYPE OF FACILITY: fleet refueling station; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) 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 product piping associated with the UST system; PENALTY: $2,500; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Darleen Cornett dba Cen-Tex Muffler Shop; DOCKET NUMBER: 2012-2044-AIR-E; IDENTIFIER: RN106468788; LOCATION: Waco, McLennan County; TYPE OF FACILITY: automotive repair shop; RULE VIOLATED: 30 TAC §114.20(b) and Texas Health and Safety Code, §382.085(b), by failing to equip a motor vehicle with either the control systems or devices that were originally a part of the motor vehicle or motor vehicle engine, or an alternate control system; PENALTY: $750; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Donald Martinek; DOCKET NUMBER: 2012-1915-IHW-E; IDENTIFIER: RN106491756; LOCATION: Celina, Denton County; TYPE OF FACILITY: unauthorized waste disposal site; RULE VIOLATED: 30 TAC §335.4(1), by failing to prevent the unauthorized discharge of industrial solid waste; PENALTY: $938; ENFORCEMENT COORDINATOR: Judy Kluge,

(817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Eagle Rock Field Services, L.P.; DOCKET NUMBER: 2012-1447-AIR-E; IDENTIFIER: RN102527397; LOCATION: Pampa, Gray County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §§101.20(1), 116.620(c)(1), and 122.143(4), Standard Permit Number 71141, Federal Operating Permit Number O3174, Special Terms and Conditions Number 1.A., 40 Code of Federal Regulations (CFR) §60.482 - 1(a) and Texas Health and Safety Code, §382.085(b), by failing to conduct Leak Detection and Repair monitoring on 264 valves, four pumps, and three pressure relief valves that were not represented as being subject to 40 CFR Part 60, Subpart KKK; PENALTY: $27,157; Supplemental Environmental Project offset amount of $10,863 applied to Borger Independent School District (ISD) - Borger ISD Clean School Bus Replacement Program; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(17) COMPANY: Energy Pumping Specialties, Incorporated; DOCKET NUMBER: 2012-1721-MLM-E; IDENTIFIER: RN105361307; LOCATION: Laredo, Webb County; TYPE OF FACILITY: bulk mineral handling plant; RULE VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent the discharge of air contaminants in such concentration and of such duration as to interfere with the normal use and enjoyment of animal life, vegetation, or property; 30 TAC §106.144(1) and THSC, §382.085(b), by failing to transport all material in a closed conveying system and to exhaust all air to the atmosphere through vented fabric filters with a maximum filtering velocity of 7.0 feet per minute with automatic air cleaning; 30 TAC §106.144(2) and THSC, §382.085(b), by failing to water all in-plant roads and work areas to control dust emissions; 30 TAC §106.144(3) and THSC, §382.085(b), by failing to ensure a facility (including associated stationary equipment and stockpiles) is located at least 300 feet from any recreational area, school, residence, or other structure not occupied or used solely by the owner of the property upon which the facility is located; 30 TAC §106.4(c) and THSC, §382.085(b), by failing to maintain emission control equipment in good condition and operated properly during operation of the facility; 30 TAC §328.25(c) and THSC, §371.105(c), by failing to maintain copies of the bills of lading for the shipments of used oil filters; 30 TAC §324.4(1) and 40 Code of Federal Regulations (CFR) §279.22(a), (b), and (d)(3), by failing to ensure that used oil is stored in tanks, containers, or units subject to regulation under CFR Part 264 or Part 265, that are in good condition and not leaking, and by failing to clean up and properly manage used oil and used oil filters; and 30 TAC §324.4(1) and 40 CFR §279.22(c), by failing to properly label containers storing used oil with the words Used Oil; PENALTY: $6,575; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(18) COMPANY: Erasmo Lopez, Jr. dba Lopez Ready Mix Concrete; DOCKET NUMBER: 2012-0696-WQ-E; IDENTIFIER: RN104443866; LOCATION: Rio Grande, Starr County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG110905, Part III, Permit Requirements Section F(2)(c), by failing to maintain and implement the Storm Water Pollution Prevention Plan (SWP3); 30 TAC §281.25(a)(4) and §305.125(1) and TPDES General Permit Number TXG110905, Part III, Permit Requirements Section B(2), by failing to conduct quarterly storm water monitoring for the last quarter of 2008, all four quarters of 2009, all four quarters of 2010, and the first quarter of 2011 as specified in the permit; 30 TAC §305.125(1) and TPDES General Permit Number TXG110905, Part III, Permit Requirements Section F(2)(c)(4), by failing to conduct, at a minimum, monthly inspections of designated equipment and areas of the site for the months of December 2009 - November 2010; 30 TAC §305.125(1) and TPDES General Permit Number TXG110905, Part III, Permit Requirements Section F(2)(c)(5), by failing to conduct employee training at the interval specified in the site's SWP3 for 2008 and 2009; and 30 TAC §281.25(a)(4) and §305.125(1) and TPDES General Permit Number TXG110905, Part III, Permit Requirements Section F(2)(d), by failing to conduct the annual comprehensive site compliance evaluation; PENALTY: $20,462; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(19) COMPANY: Gonzales Retailers, LLC dba St Joseph Food Mart; DOCKET NUMBER: 2012-1339-PST-E; IDENTIFIER: RN100529619; LOCATION: Gonzales, Gonzales County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain underground storage tank (UST) records and making them immediately available for inspection upon request by agency personnel; 30 TAC §334.7(d)(3) and §334.8(c)(4)(c), by failing to notify the agency of any change or additional information regarding the UST within 30 days of the occurrence of the change or addition and by failing to obtain a current UST delivery certificate by submitting a properly completed new UST registration and self-certification form within 30 days of ownership change; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §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); 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to conduct reconciliation of inventory control records at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.50(d)(1)(B)(iii)(I) and TWC, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST; and 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with the UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight, and free of liquid and debris; PENALTY: $9,549; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: Handy Place, Incorporated; DOCKET NUMBER: 2012-2080-PST-E; IDENTIFIER: RN101565380; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,813; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: LANXESS Corporation; DOCKET NUMBER: 2012-1715-AIR-E; IDENTIFIER: RN100825363; LOCATION: West Orange, Orange County; TYPE OF FACILITY: synthetic rubber plant; RULE VIOLATED: 30 TAC §101.201(a) and (b) and §122.143(4);

Federal Operating Permit (FOP) Number O-2280, Special Terms and Conditions (STC) Number 2 and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for Incident Number 166846 no later than 24 hours after the discovery of the emissions event and by failing to submit a final record of the emissions event no later than two weeks after the end of the event; and 30 TAC §116.115(b)(2)(F) and §122.143(4); New Source Review Permit Number 19663, General Conditions Number 8; FOP Number O-2280, STC Numbers 2 and 12; and THSC, §382.085(b), by failing to prevent unauthorized emissions during an event that occurred from March 16, 2012 - March 28, 2012 (Incident Number 166846); PENALTY: $7,438; Supplemental Environmental Project offset amount of $2,975 applied to Southeast Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Lithia Motors Support Services, Incorporated dba Lithia Chrysler Jeep Dodge of Corpus Christi; DOCKET NUMBER: 2012-2150-PST-E; IDENTIFIER: RN100611169; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: vehicle dealership with a non-retail fleet refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(2)(B) and TWC, §26.3475(b), by failing to provide proper release detection for the suction piping associated with the underground storage tank system; PENALTY: $2,954; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(23) COMPANY: Lone Star Distributors, Incorporated dba Robles Country Mart; DOCKET NUMBER: 2011-2105-PST-E; IDENTIFIER: RN102058542; LOCATION: La Feria, Cameron County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the underground storage tank (UST); and 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form a least 30 days before the expiration date; PENALTY: $1,125; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(24) COMPANY: Manuel Robles dba Shallowater Truck Stop; DOCKET NUMBER: 2012-1769-PST-E; IDENTIFIER: RN103935615; LOCATION: Shallowater, Lubbock County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(25) COMPANY: MD LANCASTER COMPANY, INCORPORATED dba Dry Clean Super Center; DOCKET NUMBER: 2012-1599-MLM-E; IDENTIFIER: RN103950937; LOCATION: Hurst, Tarrant County; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.20(e)(3)(A), by failing to install a secondary containment structure around a dry cleaning waste storage area; 30 TAC §337.20(e)(6)(B), by failing to keep a log of weekly visual inspections of each installed secondary containment structure; and 30 TAC §335.62 and 40 Code of Federal Regulations §262.11, by failing to conduct a hazardous waste determination; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Mondial, Incorporated dba Hempstead Truck Stop; DOCKET NUMBER: 2012-1474-PST-E; IDENTIFIER: RN102031655; LOCATION: Hempstead, Waller County; TYPE OF FACILITY: truck stop and convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once per 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: $7,629; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: NAMZ ENTERPRISES, INCORPORATED dba Short Stop Market; DOCKET NUMBER: 2012-1986-PST-E; IDENTIFIER: RN101740496; LOCATION: Katy, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: P. M. Petroleum, Incorporated dba Hamilton Market; DOCKET NUMBER: 2012-1812-PWS-E; IDENTIFIER: RN105027791; LOCATION: Dripping Springs, Travis County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis; and 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source escherichia coli sample from the facility's well within 24 hours of notification of a distribution total coliform-positive sample; PENALTY: $3,022; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(29) COMPANY: PIERCE CONSTRUCTION, INCORPORATED dba Zippy JS; DOCKET NUMBER: 2012-1856-PST-E; IDENTIFIER: RN101795011; LOCATION: Beckville, Panola County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; PENALTY: $5,755; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(30) COMPANY: Rolling Creek Utility District; DOCKET NUMBER: 2012-1792-MWD-E; IDENTIFIER: RN103888467; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0012841001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: Shell Oil Company; DOCKET NUMBER: 2012-1385-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), TCEQ Flexible Permit Numbers 21262 and PSDTX 928, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,500; Supplemental Environmental Project offset amount of $3,000 applied to Houston - Galveston Area Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(32) COMPANY: Sprint Waste Services LP; DOCKET NUMBER: 2012-1585-IHW-E; IDENTIFIER: RN105115554; LOCATION: Houston, Harris County; TYPE OF FACILITY: industrial waste transportation; RULE VIOLATED: 30 TAC §335.2(b), by failing to prevent the disposal of industrial hazardous waste at an unauthorized facility; and 30 TAC §335.6(d), by failing to update the facility's Notice of Registration; PENALTY: $3,700; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: St. Andrew Lutheran Church; DOCKET NUMBER: 2012-0154-EAQ-E; IDENTIFIER: RN102749363; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: church property; RULE VIOLATED: 30 TAC §213.4(g)(1)(A), by failing to provide proof of deed recordation for the January 2, 1997, Water Pollution Abatement Plan (WPAP) approval letter; 30 TAC §213.4(k) and WPAP Numbers 318.00 and 318.02, Special Condition Number 3, by failing to provide a maintenance plan and schedule for the water quality basin; and 30 TAC §213.4(k) and WPAP Numbers 318.00 and 318.02, Permanent Pollution Abatement Measures, by failing to construct the water quality basin as required by the WPAP; PENALTY: $7,250; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(34) COMPANY: Stolthaven Houston, Incorporated; DOCKET NUMBER: 2012-1581-AIR-E; IDENTIFIER: RN100210475; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical products storage and distribution terminal; RULE VIOLATED: 30 TAC §101.10(b)(2) and (e) and Texas Health and Safety Code, §382.085(b), by failing to submit an annual emissions inventory update by March 31, 2012; PENALTY: $6,563; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: Taimoor Enterprises, Incorporated dba Kwik Stop 1; DOCKET NUMBER: 2012-0965-PST-E; IDENTIFIER: RN102409380; LOCATION: Palestine, Anderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,500; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(36) COMPANY: Texas H2O, Incorporated dba Sunset Canyon Water Moore Estates; DOCKET NUMBER: 2012-1927-PWS-E; IDENTIFIER: RN102690203; LOCATION: Granbury, Hood County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c)(8) and §290.46(m), by failing to ensure that the facility's ground storage tanks are painted, disinfected, and maintained in strict accordance with current American Water Works Association standards and initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; and 30 TAC §290.45(b)(1)(B)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute per connection; PENALTY: $472; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(37) COMPANY: William Carroll dba Bethany Exxon; DOCKET NUMBER: 2012-1886-PST-E; IDENTIFIER: RN101885200; LOCATION: De Berry, Panola County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and TWC, §26.3467(a), by failing to timely renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $4,558; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(38) COMPANY: YASH HOSPITALITY, INCORPORATED dba Express Food Mart; DOCKET NUMBER: 2012-0928-PST-E; IDENTIFIER: RN103048856; LOCATION: Harlingen, Cameron County; TYPE OF FACILITY: convenience store with retails sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,375; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(39) COMPANY: Yen K. Tat dba Sun Stop Market; DOCKET NUMBER: 2012-1768-PST-E; IDENTIFIER: RN103136016; LOCATION: Castle Hills, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (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) and by failing to provide release detection for the piping associated with the UST; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $5,887; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201206523
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 18, 2012

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Enforcement Orders

An agreed order was entered regarding Arnold C. Mendez, Jr. dba Premier Landscaping and Irrigation, Docket No. 2011-0452-LII-E on November 30, 2012 assessing $575 in administrative penalties with $115 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Donald R. Cole and Susan Cole dba Blue Ridge Water System, Docket No. 2012-0244-PWS-E on November 30, 2012 assessing $677 in administrative penalties with $135 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sanctuary Ventures II L.P. dba Chief's Mobile Home Park, Docket No. 2012-0625-PWS-E on November 30, 2012 assessing $50 in administrative penalties with $10 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kyle Parmer and Patsy Parmer dba Parmer RV Park, Docket No. 2012-0752-PWS-E on November 30, 2012 assessing $434 in administrative penalties with $86 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNIVERSAL FINANCE CORPORATION dba LBJ Food Mart Chevron, Docket No. 2012-0770-PST-E on November 30, 2012 assessing $1,300 in administrative penalties with $260 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Paducah, Docket No. 2012-0806-WQ-E on November 30, 2012 assessing $1,337 in administrative penalties with $267 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SI INVESTMENT CORP dba Cowboy Kwik Stop No 4, Docket No. 2012-0812-PST-E on November 30, 2012 assessing $4,684 in administrative penalties with $936 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Brownsville, Docket No. 2012-0829-PST-E on November 30, 2012 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHAN LUCKY STAR, INC. dba Lucky Star Grocery, Docket No. 2012-0900-PST-E on November 30, 2012 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SIGNATURE FLIGHT SUPPORT CORPORATION, Docket No. 2012-0934-PST-E on November 30, 2012 assessing $5,145 in administrative penalties with $1,029 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Veslan Properties, Inc., Docket No. 2012-0942-PST-E on November 30, 2012 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BELL-MILAM-FALLS WATER SUPPLY CORPORATION, Docket No. 2012-0946-PWS-E on November 30, 2012 assessing $789 in administrative penalties with $157 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Davis Gas Processing, Inc., Docket No. 2012-0982-AIR-E on November 30, 2012 assessing $6,538 in administrative penalties with $1,307 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hamid Nikbeh dba K-P Food Store, Docket No. 2012-0998-PST-E on November 30, 2012 assessing $6,120 in administrative penalties with $1,224 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kirbyville Consolidated Independent School District, Docket No. 2012-1009-PST-E on November 30, 2012 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R & R Suleiman LLC dba Chevron Express, Docket No. 2012-1010-PST-E on November 30, 2012 assessing $3,634 in administrative penalties with $726 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WTL, L.L.C., Docket No. 2012-1064-AIR-E on November 30, 2012 assessing $1,838 in administrative penalties with $367 deferred.

Information concerning any aspect of this order may be obtained by contacting Linda Ndoping, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cypress Hill Municipal Utility District No. 1, Docket No. 2012-1103-MWD-E on November 30, 2012 assessing $2,745 in administrative penalties with $549 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Marlin, Docket No. 2012-1112-PWS-E on November 30, 2012 assessing $441 in administrative penalties with $88 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Donna Independent School District, Docket No. 2012-1134-PST-E on November 30, 2012 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Safeway Inc. dba Randalls 3070, Docket No. 2012-1170-PST-E on November 30, 2012 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chambers County Improvement District No. 1, Docket No. 2012-1181-MWD-E on November 30, 2012 assessing $6,300 in administrative penalties with $1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lakshmi, LTD. dba HWY 77 One Stop, Docket No. 2012-1183-PST-E on November 30, 2012 assessing $6,692 in administrative penalties with $1,338 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Campo Independent School District, Docket No. 2012-1187-PST-E on November 30, 2012 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAND HILLS WATER SUPPLY CORPORATION, Docket No. 2012-1236-PWS-E on November 30, 2012 assessing $624 in administrative penalties with $124 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Devon Gas Services, L.P., Docket No. 2012-1276-AIR-E on November 30, 2012 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Linda Ndoping, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Car Spa, Inc. dba Car Spa 018, Docket No. 2012-1278-PST-E on November 30, 2012 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Linda Ndoping, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Paso County Water Control and Improvement District No. 4, Docket No. 2012-1299-MWD-E on November 30, 2012 assessing $6,825 in administrative penalties with $1,365 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M S MARKETING, INC. dba Food Town, Docket No. 2012-1330-PST-E on November 30, 2012 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GRANBURY QUICK CORPORATION dba Quick Track, Docket No. 2012-1335-PST-E on November 30, 2012 assessing $3,879 in administrative penalties with $775 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Henrietta, Docket No. 2012-1371-PWS-E on November 30, 2012 assessing $360 in administrative penalties with $72 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jackie Diane Powell dba Best American Facility, Docket No. 2012-1384-IWD-E on November 30, 2012 assessing $3,725 in administrative penalties with $745 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of Alice, Docket No. 2012-1664-WQ-E on November 30, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Southwest Integrated Enterprises Inc, Docket No. 2012-1750-WR-E on November 30, 2012 assessing $350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Benjamin Sanjuan dba Deer Trail Mobile Home Park, Docket No. 2010-0801-MLM-E on December 10, 2012 assessing $92,734 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512) 239-0736, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Huntington, Docket No. 2011-0504-MWD-E on December 10, 2012 assessing $38,925 in administrative penalties with $38,925 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amana Rose, LLC dba Tejas Village, Docket No. 2011-0924-PWS-E on December 10, 2012 assessing $18,357 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Van Alstyne, Docket No. 2011-0940-MWD-E on December 10, 2012 assessing $30,845 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Apache Energy, Inc., Docket No. 2011-1093-AIR-E on December 10, 2012 assessing $14,813 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Edward DeVoe Smith dba Smittys, Docket No. 2011-1158-PST-E on December 10, 2012 assessing $7,777 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dae H. Lee dba Smile Mart, Docket No. 2011-1382-PST-E on December 10, 2012 assessing $9,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amin Makhani dba Asian Groceries, Docket No. 2011-1950-PST-E on December 10, 2012 assessing $11,582 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Herlinda G. Cantu, Docket No. 2011-2202-EAQ-E on December 10, 2012 assessing $8,100 in administrative penalties with $1,620 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Arlington, Docket No. 2011-2258-WQ-E on December 10, 2012 assessing $11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mart, Docket No. 2012-0162-MSW-E on December 10, 2012 assessing $8,175 in administrative penalties with $1,635 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jackie C. Underwood dba Tire Outlet, Docket No. 2012-0195-MSW-E on December 10, 2012 assessing $47,500 in administrative penalties with $9,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Noel S Corporation dba Daves Food & Deli, Docket No. 2012-0227-PST-E on December 10, 2012 assessing $7,509 in administrative penalties with $1,501 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EAS Oil, LLC dba Stage Coach Stop, Docket No. 2012-0355-PST-E on December 10, 2012 assessing $37,332 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding R K DREAMS INC, Docket No. 2012-0404-PST-E on December 10, 2012 assessing $17,159 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WM Resource Recovery & Recycling Center, Inc., Docket No. 2012-0462-AIR-E on December 10, 2012 assessing $22,485 in administrative penalties with $4,497 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOUTHWESTERN HOLDINGS, INC., Docket No. 2012-0469-PWS-E on December 10, 2012 assessing $2,513 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shumard Corporation dba Associated Fiberglass Enterprises, Docket No. 2012-0481-AIR-E on December 10, 2012 assessing $15,402 in administrative penalties with $3,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INVISTA S.a.r.l., Docket No. 2012-0684-AIR-E on December 10, 2012 assessing $8,304 in administrative penalties with $1,660 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aus-Tex Parts & Services, Ltd., Docket No. 2012-0729-MWD-E on December 10, 2012 assessing $13,750 in administrative penalties with $2,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MHC TT, Inc., Docket No. 2012-0742-MWD-E on December 10, 2012 assessing $7,525 in administrative penalties with $1,505 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INWOOD STORES, INC. dba Inwood Food Mart, Docket No. 2012-0768-PST-E on December 10, 2012 assessing $12,150 in administrative penalties with $2,430 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Dripping Springs, Docket No. 2012-0801-MWD-E on December 10, 2012 assessing $14,438 in administrative penalties with $2,887 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Formosa Plastics Corporation, Texas, Docket No. 2012-0804-AIR-E on December 10, 2012 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Klaas Talsma dba Talsma Dairy, Docket No. 2012-0840-AGR-E on December 10, 2012 assessing $49,687 in administrative penalties with $9,937 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2012-0897-AIR-E on December 10, 2012 assessing $19,689 in administrative penalties with $3,937 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Victoria County Water Control and Improvement District No. 2, Docket No. 2012-0913-MWD-E on December 10, 2012 assessing $18,360 in administrative penalties with $3,672 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brian Dlugosch and Pete A. Dlugosch dba Double D RV Park 1, Docket No. 2012-0935-PWS-E on December 10, 2012 assessing $2,169 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tom Green County Fresh Water Supply District 2, Docket No. 2012-0957-PWS-E on December 10, 2012 assessing $4,990 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bee Trucking, LLC, Docket No. 2012-0993-PST-E on December 10, 2012 assessing $13,557 in administrative penalties with $2,711 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cameron, Docket No. 2012-1101-PWS-E on December 10, 2012 assessing $8,721 in administrative penalties with $1,744 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2012-1139-AIR-E on December 10, 2012 assessing $14,001 in administrative penalties with $2,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201206550
Bridget Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 19, 2012

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Notice of Water Rights Applications

Notice issued December 13, 2012.

APPLICATION NO. 12719; Sunoco Partners Marketing & Terminals L.P., P.O. Box 758, Nederland, Texas 77627, Applicant, has applied for a temporary water use permit to divert and use not to exceed 256 acre-feet of water from the Neches River, Neches River Basin within a period of one year for industrial purposes (hydrostatic testing) in Jefferson County. The application and fees were received on June 23, 2011. Additional information was received on July 14, 2011 and August 18, 2011. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 5, 2012. The Texas Commission on Environmental Quality (TCEQ) Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions, including but not limited to, utilizing screens on diversion structures. 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, 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, by January 2, 2013.

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 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-201206549
Bridget Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 19, 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: 8-day Pre-election Report due May 21, 2012 for Committees

Wade Emmert, Dallas County Republican Party (CEC), 10300 N. Central Expy., Ste. 345, Dallas, Texas 75231

Deadline: Monthly Report due October 5, 2012 for Committees

Kevin Cox, Grand Prairie Police Association PAC, P.O. Box 531184, Grand Prairie, Texas 75053-1184

Deadline: 30-day Pre-election Report due October 9, 2012 for Committees

Keny Michael Apodaca, El Paso Young Democrats PAC, 3323 Sacramento, El Paso, Texas 79930

Weston Martinez, Texas Freedom PAC, 14427 Brookhollow, Ste. 312, San Antonio, Texas 78232

Jefferey Allen Duvall, Cameron County Democratic Party Executive Committee (CEC), 829 W. 16th St., Brownsville, Texas 78520-6544

Deadline: Lobby Activities Report due October 10, 2012

David Doran Parker, 1116 Houston St., Rm. 104, Fort Worth, Texas 76102

TRD-201206442
David A. Reisman
Executive Director
Texas Ethics Commission
Filed: December 13, 2012

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Texas Facilities Commission

Request for Proposals #303-4-20365

The Texas Facilities Commission ("TFC"), on behalf of the Office of the Attorney General ("OAG"), announces the issuance of Request for Proposals ("RFP") #303-4-20365. TFC seeks a five (5) or ten (10) year lease of approximately 4,745 square feet of office space in Austin, Travis County, Texas.

The deadline for questions is January 7, 2013, and the deadline for proposals is January 18, 2013, at 3:00 p.m. The award date is February 20, 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=103748.*

TRD-201206561
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 19, 2012

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project during the period of November 12, 2012 through November 16, 2012. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office's web site. The notice was published on the web site on December 19, 2012. The public comment period for this project will close at 5:00 p.m. on January 18, 2013.

FEDERAL AGENCY ACTIONS:

Applicant: Clayton's Beach Bar & Grill

Location: The project is located in the Gulf of Mexico, at 6900 Padre Boulevard, in South Padre Island, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel NW, Texas. NAD 83: Latitude: 26.13767 North; Longitude: 97.16845 West

Project Description: The applicant proposes to construct a wooden, elevated fishing pier, extending from Clayton's Beach Bar and Grill's deck into the Gulf of Mexico. The purpose of the pier is to provide visitors with access to recreation and fishing opportunities in the Gulf of Mexico. The project involves construction of a 15-foot-wide by 1,000-foot-long pier atop pilings spaced 12 feet apart. There would be three spans near the beach where the pilings are spaced 16 feet apart to allow for vehicular access along the beach. Along the length of the pier, beginning approximately 200 feet from its origin, the applicant proposes to construct a 35- by 100-foot covered concession area. The pier would be constructed 20 feet above Mean Low Tide and terminate with a 25- by 50-foot L-head.

CMP Project No.: 13-0993

Type of Application: U.S.A.C.E. permit application #SWG-2012-00963 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the application listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Andrea Finch, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at andrea.finch@glo.texas.gov. Comments should be sent to Ms. Finch at the above address or by email.

TRD-201206566
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: December 19, 2012

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Methodology for Dual Eligibles

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on January 11, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment methodology for cost sharing payments for Medicare services provided to certain individuals, referred to as dual eligibles, who are eligible for both Medicare and Medicaid.

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 Title 1, Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment methodology is proposed to be effective January 1, 2013.

Methodology and Justification. The Texas Medicaid Program makes cost sharing payments for Medicare services provided to certain individuals, referred to as dual eligibles, who are eligible for both Medicare and Medicaid. This cost sharing is paid for Medicare Part A hospital services and Medicare Part B physician and other outpatient services. On January 1, 2012, Texas Medicaid began limiting payment for Medicare Part B services provided to dual eligibles to no more than the Medicaid payment amount for the same service, pursuant to direction in the 2012-13 General Appropriations Act (House Bill 1, 82nd Legislature, Regular Session, 2011). This policy, called Medicare Equalization, aligned policies on payment of cost sharing for Medicare Part B services with payment of Medicare Part A services, which already were subject to a similar payment methodology.

The purpose of this amendment is to modify the existing payment methodology for all Part B services. Effective January 1, 2013, the Texas Medicaid Program proposes to pay Part B deductibles for dual eligibles according to the Medicare rate for the purpose of ensuring continued access to care.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $30,075,000 for the remainder of federal fiscal year (FFY) 2013, consisting of $21,375,000 in federal funds and $8,700,000 in state general revenue. For FFY 2014, the estimated additional annual expenditure is $40,100,000 consisting of $28,500,000 in federal funds and $11,600,000 in state general revenue.

Briefing Package. To obtain copies of the proposed amendment, interested parties may contact Gary Young by mail at 11209 Metric Blvd. Bldg H, Mail Code 425, Austin, TX 78758-4183; by phone at (512) 491-1105; by fax to (512) 491-1971; or by e-mail to gary.young@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services. The proposed amendment 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 Gary Young at 11209 Metric Blvd. Bldg. H, Mail Code 425, Austin, TX 78758-4183; by fax to Gary Young at (512) 491-1971; or by e-mail to Gary.Young@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Gary Young, Mail Code H-425, 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 Leigh Van Kirk at (512) 491-2813 at least 72 hours in advance so that appropriate arrangements can be made.

TRD-201206590
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: December 19, 2012

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 13-001 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The requested effective date for the proposed amendment is January 1, 2013.

The Texas Medicaid Program makes cost sharing payments for Medicare services provided to certain individuals, referred to as dual eligibles, who are eligible for both Medicare and Medicaid. This cost sharing is paid for Medicare Part A hospital services and Medicare Part B physician and other outpatient services. On January 1, 2012, Texas Medicaid began limiting payment for Medicare Part B services provided to dual eligibles to no more than the Medicaid payment amount for the same service, pursuant to direction in the 2012-13 General Appropriations Act (House Bill 1, 82nd Legislature, Regular Session, 2011). This policy, called Medicare Equalization, aligned policies on payment of cost sharing for Medicare Part B services with payment of Medicare Part A services, which already were subject to a similar payment methodology.

The purpose of this amendment is to modify the existing payment methodology for all Part B services. Effective January 1, 2013, the Texas Medicaid Program proposes to pay Part B deductibles for dual eligibles according to the Medicare rate for the purpose of ensuring continued access to care.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $30,075,000 for the remainder of federal fiscal year (FFY) 2013, consisting of $21,375,000 in federal funds and $8,700,000 in state general revenue. For FFY 2014, the estimated additional annual expenditure is $40,100,000 consisting of $28,500,000 in federal funds and $11,600,000 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Gary Young by mail at 11209 Metric Blvd. Bldg. H, Mail Code 425, Austin, TX 78758-4183; by phone at (512) 491-1105; by fax to (512) 491-1971; or by e-mail to gary.young@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201206572
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: December 19, 2012

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Texas Department of Housing and Community Affairs

Notice of Public Hearing for the Program Year 2013 Weatherization Assistance Program Plan

The Texas Department of Housing and Community Affairs (the "Department" or "TDHCA") will hold a public hearing to receive comments on the draft Program Year (PY) 2013 Texas Weatherization Assistance Program (WAP) State Plan. The hearing will take place at the following time and location:

Wednesday, January 16, 2013

1:00 p.m.

TDHCA Headquarters

221 East 11th Street

Conference Room 116

Austin, Texas 78701

At the hearing, a representative from TDHCA will describe changes to the WAP and the proposed use of the U.S. Department of Energy funds

for PY 2013, which will be for the period of April 1, 2013 to March 31, 2014.

The 2013 DOE Weatherization budget is estimated at $1,300,000, a significant decrease from the pre-ARRA and ARRA budget levels. Although there are 26 possible Subrecipients in the statewide network, the Department will provide DOE WAP funding to only four: Alamo Area Council of Governments, Community Action Corporation of South Texas, Dallas County Health and Human Services, and Neighborhood Services, Inc. in an amount not to exceed $349,999 per entity. These four Subrecipients are the only four that exceed 8 units. To ensure that all areas of the state receive equitable weatherization funding and services, the Department will adjust LIHEAP WAP funds to offset the concentration of the DOE funds to the four DOE funded entities.

Local officials and citizens are encouraged to participate in the hearing process. Written and oral comments received will be used to finalize the PY 2013 Texas Weatherization Assistance Program State Plan and Application. Written comments from those who cannot attend the hearing in person may be provided by the close of business at 5:00 p.m. on January 17, 2013, to Cate Taylor, Senior Planner, Community Affairs Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711 or by electronic mail to cate.taylor@tdhca.state.tx.us. A copy of the proposed Draft Plan may be obtained, after December 17, 2012, through TDHCA's web site, http://www.tdhca.state.tx.us/community-affairs/wap/index.htm or by calling Ms. Taylor at (512) 475-1435 or by writing to Ms. Taylor at the TDHCA address given above.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two (2) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Jorge Reyes by phone at (512) 475-4577 or by email at jorge.reyes@tdhca.state.tx.us at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 o enviarle un correo electrónico a jorge.reyes@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201206531

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 18, 2012

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Texas Lottery Commission

Instant Game Number 1486 "Cash Excitement"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1486 is "CASH EXCITEMENT". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1486 shall be $20.00 per Ticket.

1.2 Definitions in Instant Game No. 1486.

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: 01, 02, 03, 04, 05, 06, 07, 08, 09, 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, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, COIN SYMBOL, STACK OF MONEY SYMBOL, $20.00, $25.00, $50.00, $100, $150, $200, $500, $1,000, $10,000, $1,000,000, and DOUBLE DOLLAR SIGN SYMBOL.

D. Play Symbols 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.1486 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	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
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX

47	FRSV
48	FRET
49	FRNI
50	FFTY
COIN SYMBOL	WIN ALL
STACK OF MONEY SYMBOL	WIN
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$150	ONEFIFTY
$200	TWO HUN
$500	FIV HUN
$1,000	ONE THOU
$10,000	10 THOU
$1,000,000	1 MILLION
DOUBLE DOLLAR SIGN SYMBOL	DBL

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 $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $70.00, $100, $150, $200, or $500.

H. High-Tier Prize - A prize of $1,000, $10,000, or $1,000,000.

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 (1486), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1486-0000001-001.

K. Pack - A Pack of "CASH EXCITEMENT" Instant Game Tickets contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse, i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

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 "CASH EXCITEMENT" Instant Game No. 1486 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 "CASH EXCITEMENT" Instant Game is determined once the latex on the Ticket is scratched off to expose 32 (thirty-two) Play Symbols. GAME 1: If the player's YOUR NUMBERS Play Symbols add up to 7, the player wins the PRIZE. GAME 2: If a player matches any of YOUR AMOUNTS Play Symbols to the LUCKY AMOUNT Play Symbol, the player wins that amount. GAME 3: If a player matches any of YOUR NUMBERS Play Symbols to the WINNING NUMBER Play Symbol, the player wins the PRIZE for that number. If a player reveals a "COIN" Play Symbol, the player WINS ALL 4 PRIZES instantly. GAME 4: The player adds the numbers in each row across. If the total in a single row equals 10 or more, the player wins the PRIZE for that row. If a player reveals a "STACK OF MONEY" Play Symbol, the player wins the PRIZE for that row instantly. GAME 5: If a player reveals 3 matching prize amounts Play Symbols, the player wins that amount. If a player reveals 2 matching prize amounts Play Symbols and a "DOUBLE DOLLAR" Play Symbol, the player wins DOUBLE that prize amount instantly. 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 32 (thirty-two) 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 32 (thirty-two) 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 32 (thirty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 32 (thirty-two) 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 within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to thirteen (13) times.

D. On all Tickets, a prize amount will not appear more than 3 times, except as required by the prize structure to create multiple wins.

E. On winning and Non-Winning Tickets, the top cash prizes of $10,000 and $1,000,000 will each appear at least once.

F. GAME 1: Players can win up to one (1) time in this play area.

G. GAME 1: This play area will consist of two (2) YOUR NUMBERS Play Symbols and one Prize Symbol.

H. GAME 1: The total of the two YOUR NUMBERS Play Symbols will not add up to seven (7) on a Non-Winning Ticket.

I. GAME 2: Players can win up to four (4) times in this play area.

J. GAME 2: This play area consists of four (4) YOUR AMOUNTS Play Symbols and one (1) LUCKY AMOUNT Play Symbol.

K. GAME 2: A YOUR AMOUNTS Play Symbol will not match a LUCKY AMOUNT Play Symbol on Non-Winning Tickets.

L. GAME 2: On winning Tickets, a non-winning prize amount will not match a winning prize amount.

M. GAME 2: All YOUR AMOUNTS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

N. GAME 3: Players can win up to four (4) times in this play area.

O. GAME 3: This play area consists of four (4) YOUR NUMBERS Play Symbols, four (4) Prize Symbols and one (1) WINNING NUMBER Play Symbol.

P. GAME 3: A YOUR NUMBERS Play Symbol will not match the WINNING NUMBER Play Symbol on Non-Winning Tickets.

Q. GAME 3: The COIN symbol will never appear as the WINNING NUMBER Play Symbol.

R. GAME 3: The COIN symbol will never appear on Non-Winning Tickets.

S. GAME 3: All YOUR NUMBERS Play Symbols and PRIZE Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

T. GAME 3: When the COIN symbol appears, there will not be any matches between YOUR NUMBERS Play Symbols and WINNING NUMBERS Play Symbols.

U. GAME 4: Players can win up to three (3) times in this play area.

V. GAME 4: This play area consists of six (6) Play Symbols and three (3) Prize Symbols.

W. GAME 4: The total of the two Play Symbols in the same row will not add up to ten (10) or more on a Non-Winning Ticket.

X. GAME 4: On winning and Non-Winning Tickets, no more than two (2) identical numbers will appear in this play area.

Y. GAME 4: On winning and Non-Winning Tickets, no more than two (2) identical non-winning Prize Symbols will appear in this play area.

Z. GAME 4: The STACK OF MONEY symbol will never appear on Non-Winning Tickets.

AA. GAME 4: There will never be more than one (1) STACK OF MONEY symbol per row in this play area.

BB. GAME 5: Players can win up to one (1) time in this play area.

CC. GAME 5: This play area consists of six (6) Prize Symbols.

DD. GAME 5: There will never be more than three (3) matching Prize Symbols on a single Ticket.

EE. GAME 5: On winning Tickets, two (2) matching Prize Symbols and the "$$" symbol will win DOUBLE the prize amount shown and will win as per the prize structure.

FF. GAME 5: There will never be more than one (1) "$$" symbol in this game.

GG. GAME 5: On Non-Winning Tickets, the "$$" symbol may appear when all symbols are different.

HH. GAME 5: The "$$" symbol will never appear on a Ticket which contains three (3) matching Prize Symbols.

II. GAME 5: No more than two pairs of matching Prize Symbols will appear on a winning Ticket which does not contain a "$$" symbol.

JJ. GAME 5: No more than one pair of matching Prize Symbols will appear on a Ticket containing a "$$" symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH EXCITEMENT" Instant Game prize of $20.00, $25.00, $50.00, $70.00, $100, $150, $200, 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 $25.00, $50.00, $70.00, $100, $150, $200, 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 "CASH EXCITEMENT" Instant Game prize of $1,000, $10,000, or $1,000,000, 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 "CASH EXCITEMENT" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "CASH EXCITEMENT" 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 "CASH EXCITEMENT" 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 3,000,000 Tickets in the Instant Game No. 1486. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1486 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$20	320,000	9.38
$25	200,000	15.00
$50	300,000	10.00
$70	52,500	57.14
$100	93,500	32.09
$150	14,500	206.90
$200	1,500	2,000.00
$500	45	66,666.67
$1,000	16	187,500.00
$10,000	6	500,000.00
$1,000,000	3	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 3.05. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1486 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. 1486, 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-201206532
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 18, 2012

♦ ♦ ♦

Instant Game Number 1490 "Jumbo Cash Doubler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1490 is "JUMBO CASH DOUBLER". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1490 shall be $10.00 per Ticket.

1.2 Definitions in Instant Game No. 1490.

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: BELL SYMBOL, TREASURE CHEST SYMBOL, CLOVER SYMBOL, STACK OF COINS SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, EMERALD SYMBOL, FISTFUL OF BILLS SYMBOL, MINK SYMBOL, NECKLACE SYMBOL, PIGGY BANK SYMBOL, RING SYMBOL, STAR SYMBOL, GOLD BARS SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39,

40, POT OF GOLD SYMBOL, $10.00, $20.00, $50.00, $100, $200, $500, $1,000, $2,000, and $200,000.

D. Play Symbols 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. 1490 - 1.2D

PLAY SYMBOL	CAPTION
BELL SYMBOL	BELL
TREASURE CHEST SYMBOL	CHEST
CLOVER SYMBOL	CLOVER
STACK OF COINS SYMBOL	COINS
CROWN SYMBOL	CROWN
DIAMOND SYMBOL	DMND
EMERALD SYMBOL	EMRLD
FISTFUL OF BILLS SYMBOL	FISTFUL
MINK SYMBOL	MINK
NECKLACE SYMBOL	NKLACE
PIGGY BANK SYMBOL	PIGBNK
RING SYMBOL	RING
STAR SYMBOL	STAR
GOLD BARS SYMBOL	GOLD
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO

33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
POT OF GOLD SYMBOL	DOUBLE
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$500	FIV HUND
$1,000	ONE THOU
$2,000	TWO THOU
$200,000	200 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 $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100, $200, or $500.

H. High-Tier Prize - A prize of $1,000, $2,000, or $200,000.

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 (1490), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1490-0000001-001.

K. Pack - A Pack of "JUMBO CASH DOUBLER" Instant Game Tickets contains 050 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "JUMBO CASH DOUBLER" Instant Game No. 1490 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 "JUMBO CASH DOUBLER" Instant Game is determined once the latex on the Ticket is scratched off to expose 57 (fifty-seven) Play Symbols. If a player reveals 3 identical Play Symbols in the FAST $50 play area, the player wins $50 instantly! 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 "POT OF GOLD" Play Symbol, the player wins DOUBLE the PRIZE for that Play Symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 57 (fifty-seven) 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 57 (fifty-seven) 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 57 (fifty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 57 (fifty-seven) 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 four 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. The "POT OF GOLD" (doubler) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

H. The FAST $50 play area will contain three identical Play Symbols only on intended winning Tickets as dictated by the prize structure.

I. 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 "JUMBO CASH DOUBLER" Instant Game prize of $10.00, $20.00, $50.00, $100, $200, 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, $200, 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 "JUMBO CASH DOUBLER" Instant Game prize of $1,000, $2,000 or $200,000, 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 "JUMBO CASH DOUBLER" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "JUMBO CASH DOUBLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "JUMBO CASH DOUBLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1490. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1490 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	840,000	7.14
$20	720,000	8.33
$50	120,000	50.00
$100	66,000	90.91
$200	7,500	800.00
$500	4,500	1,333.33
$1,000	450	13,333.33
$2,000	200	30,000.00
$200,000	10	600,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.41. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1490 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. 1490, 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-201206467
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 13, 2012

♦ ♦ ♦

Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction

El Paso County

Franklin Mountains State Park

In a meeting on January 24, 2013, the Texas Parks and Wildlife Commission (the Commission) will consider the transfer of approximately 7.7 acres of land to the Texas Department of Transportation. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

TRD-201206465
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: December 13, 2012

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 13, 2012, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications to Amend Its State-Issued Certificate of Franchise Authority; to add the City Limits of Athens, Texas, Project Number 41045.

The requested amendment is to expand the service area footprint to include the municipality of Athens, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41045.

TRD-201206535
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 18, 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 December 14, 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 Internap Connectivity LLC for a Service Provider Certificate of Operating Authority, Docket Number 41047.

Applicant intends to provide data only - 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 January 4, 2013. 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 41047.

TRD-201206536
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 18, 2012

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Notice of Application for Approval of the Provision of Non-Emergency 311 Service

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) for approval to provide non-emergency 311 services.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P., dba AT&T Texas for Administrative Approval to Provide Non-Emergency 311 Service for the City of Round Rock; Docket Number 41041.

The Application: On December 12, 2012, Southwestern Bell Telephone, L.P., dba AT&T Texas (AT&T Texas) filed an application pursuant to P.U.C. Substantive Rule §26.127 for approval to provide Non-Emergency 311 (NE311) service.

As a certified telecommunications utility, AT&T Texas seeks approval on behalf of the City of Round Rock to provide NE311 service to residents within the city limits of Round Rock, Texas, and portions of surrounding communities in AT&T Texas' certificated area. NE311 ser-

vice is available to local governmental entities to provide to their residents an easy-to-remember number to call for access to non-emergency services. By implementing NE311 service, communities can improve 911 response times for those callers with true emergencies. Each local government entity that elects to implement NE311 service will determine the types of non-emergency calls that will be handled by their 311 call center.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas, by January 25, 2013. Requests for further information should be mailed to the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Commission's Office of Customer Protection at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989.

TRD-201206534
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 18, 2012

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On December 17, 2012, E.Com Technologies, LLC (Applicant) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Number 60438. Applicant seeks to relinquish the certificate. Applicant stated service has never been provided and that it does not intend to provide service in Texas in the future.

The Application: Application of E.Com Technologies, LLC to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 41053.

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 January 4, 2013. 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 41053.

TRD-201206537
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 18, 2012

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Notice of Workshop

The Staff of the Public Utility Commission of Texas (commission) will hold a workshop on Tuesday, January 15, 2013, to discuss amendments to P.U.C. Substantive Rule §26.403 relating to the Texas High Cost Universal Service Plan (THCUSP). The proposed amendments to P.U.C. Substantive Rule §26.403 are pursuant to the direction of the commission at the Open Meeting of January 26, 2012, in Project No. 39937. A draft rule illustrating such potential amendments is available at http://www.puc.texas.gov/industry/filings/Default.aspx under Project No. 40342.

Parties should note that the draft illustrative rule contains proposed amendments that: (1) offer three options for a definition of "high cost rural area"; and (2) specify a mechanism by which support from the THCUSP would be eliminated over a transition period in a wire center that is not a high cost rural area. The purpose of the workshop will be to discuss the proposed amendments.

The workshop will begin at 9:30 a.m. in the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 40342, *Rulemaking Proceeding to Amend Substantive Rule §26.403 Relating to the Texas High Cost Universal Service Plan,* has been established for this proceeding. Interested parties who wish to comment on Staff's proposed draft rule or to propose alternative language must file 16 copies of such proposals with Central Records no later than 4:00 p.m. on Friday, January 11, 2013. Comments should be limited to no more than ten pages.

Questions concerning the workshop or this notice should be referred to Fred Goodwin, Competitive Markets Division, at (512) 936-7454 or at fred.goodwin@puc.texas.gov. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201206538
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 18, 2012

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of San Antonio, 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 Stinson Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of San Antonio. TxDOT CSJ No.: 1315STSON. Scope: Provide engineering/design services to overlay and mark Runway 14-32; overlay Taxiway A, B and C; replace medium intensity taxiway lights - Taxiways A, B and C; replace medium intensity runway lights Runway 14-32; and replace signage.

The DBE goal for the current project is 6 percent. The TxDOT Project Manager is Stephanie Kleiber, P.E.

Future scope work items for engineering/design services within the next five years may include the following:

1. Relocate Taxiway Delta

2. Extend Taxiway D-1

3. Install REILs Runway 9

4. Rehabilitate Apron, parallel Taxiway to Runway 32, and Runway 9-27

The City of San Antonio 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

by selecting "Stinson 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 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

www.txdot.gov/inside-txdot/division/aviation/projects.

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 by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one 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 web site 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 24, 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 Beverly Longfellow.

The consultant selection committee will be composed of Aviation Division staff 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

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 Beverly Longfellow, Grant Manager. For technical questions, please contact Stephanie Kleiber, P.E., Project Manager.

TRD-201206539

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 18, 2012

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Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Hearne, 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 Hearne Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of Hearne. TxDOT CSJ No.: 1317HEARN. Scope: Provide engineering/design services to install game fence with four gates; clear fence line and install signage.

There is no HUB goal for the current project. The TxDOT Project Manager is Paul Slusser.

Future scope work items for engineering/design services within the next five years may include the following:

1. Rehabilitate and mark all runway, apron, taxiways

The City of Hearne 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

by selecting "Hearne 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.

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 by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one 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 web site 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:

SIX 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 31, 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 Beverly Longfellow.

The consultant selection committee will be composed of Aviation Division staff members and one local Sponsor member. 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

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 Beverly Longfellow, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201206540
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 18, 2012

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Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Spearman, 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 Major Samuel B Cornelius Field during the course of the next five years through multiple grants.

Current Project: City of Spearman. TxDOT CSJ No.: 1304SPEAR. Scope: Provide engineering/design services to rehabilitate and mark Runway 2-20; reconstruct taxiway A; rehabilitate and mark taxiway A, B and C; rehabilitate/reconstruct and mark hangar access taxiways; reconstruct fueling apron; reconstruct public apron and construct concrete fueling pad.

The HUB goal for the current project is 9 percent. TxDOT Project Manager is Stephanie Kleiber, P.E.

Future scope work items for engineering/design services within the next five years may include the following:

1. Construct and mark x-wind RW
2. Build Terminal building Level 2
3. Install MIRL x-wind RW
4. Rehabilitate aprons
5. Construct turnarounds x-wind RW
6. Install fencing west and south side

The City of Spearman 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

by selecting "Major Samuel B Cornelius Field." 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 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

www.txdot.gov/inside-txdot/division/aviation/projects

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 by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one 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 web site 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:

Eight 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 29, 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 Kelle Chancey.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of 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

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 Kelle Chancey, Grant Manager. For technical questions, please contact Stephanie Kleiber, Project Manager.

TRD-201206542
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 18, 2012

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Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, January 22, 2013 at 10:00 a.m. at 200 East Riverside Drive, Room 2B-1, in Austin, Texas to receive public comments on the December 2012 Out of Cycle Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2013-2016.

The STIP reflects the federally funded transportation projects in the FY 2013-2016 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed December 2012 Out of Cycle Revisions to the FY 2013-2016 STIP will be available for review, at the time the notice of hearing is published, 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) 486-5033, and on the department's website at:

http://www.txdot.gov/government/programs/stips.html

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Friday, January 18, 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 proposed December 2012 Out of Cycle Revisions to the FY 2013-2016 STIP to Marc Williams, P.E., Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, January 28, 2013.

TRD-201206541
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 18, 2012

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Upper Rio Grande Workforce Development Board

Request for Proposals for Janitorial and Maintenance Services

PY12-RFP-200-130

Respondent shall furnish all management, tools, supplies, equipment and labor necessary to perform Janitorial and Maintenance Services detailed in this Request for Proposals in a manner that will maintain satisfactory facility conditions and present a clean, neat and professional appearance.

Release Date: Friday, December 14, 2012, 12:00 p.m. MST

Respondents' Conference: Friday, December 21, 2012, 10:00 a.m. MST

Question Submission Deadline: Thursday, January 3, 2013, 12:00 p.m. MST

SUBMISSION DEADLINE: Monday, January 14, 2013, 5:00 p.m. MST

Contact Information: Upper Rio Grande Workforce Development Board d/b/a Workforce Solutions Upper Rio Grande, 300 E. Main Street, Suite 800, El Paso, Texas 79901; telephone: (915) 887-2600; e-mail: procurement@urgjobs.org.

TRD-201206490
Joseph G. Sapien
Program Administrator
Upper Rio Grande Workforce Development Board
Filed: December 17, 2012

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Workforce Solutions Capital Area

Request for Proposals

The Workforce Solutions Capital Area Workforce Board is soliciting proposals from qualified organizations to provide website redesign, hosting, and ongoing maintenance and support services. This request for proposals (RFP) may be obtained by contacting Angelica Benavides either by fax at (512) 719-4710 or email at angelica.benavides@wfscapitalarea.com, beginning 10:00 a.m., December 14, 2012.

The RFP will be mailed or sent electronically as requested by the interested party. The RFP may also be picked up in person at the office of Workforce Solutions Capital Area beginning 10:00 a.m., December 14, 2012. The RFP may also be downloaded from www.wfscapitalarea.com. The submission due date is January 28, 2013 by 12:00 p.m.

TRD-201206473
Alan D. Miller
Executive Director
Workforce Solutions Capital Area
Filed: December 13, 2012

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Workforce Solutions Deep East Texas

Request for Proposals

Workforce Solutions Deep East Texas is seeking one or more proposals to provide both mentoring and training for child care providers in the twelve-county area to improve the quality of child care for infants, toddlers, preschoolers and school-agers.

Anyone interested should obtain a copy of the Request for Proposal #12-312 (RFP) at www.detwork.org or you can request a copy of the RFP by contacting:

Darla Johnson, Procurement/Contracts Manager

Workforce Solutions Deep East Texas

539 S. Chestnut, Suite 300

Lufkin, Texas 75901

Phone: (936) 639-8898

Fax: (936) 633-7491

Email: djohnson@detwork.org

RFP release date: December 12, 2012

Deadline for submission of proposal: January 25, 2013 at 3:00 p.m.

TRD-201206463
Charlene Meadows
Executive Director
Workforce Solutions Deep East Texas
Filed: December 13, 2012

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*