TEXAS REGISTER

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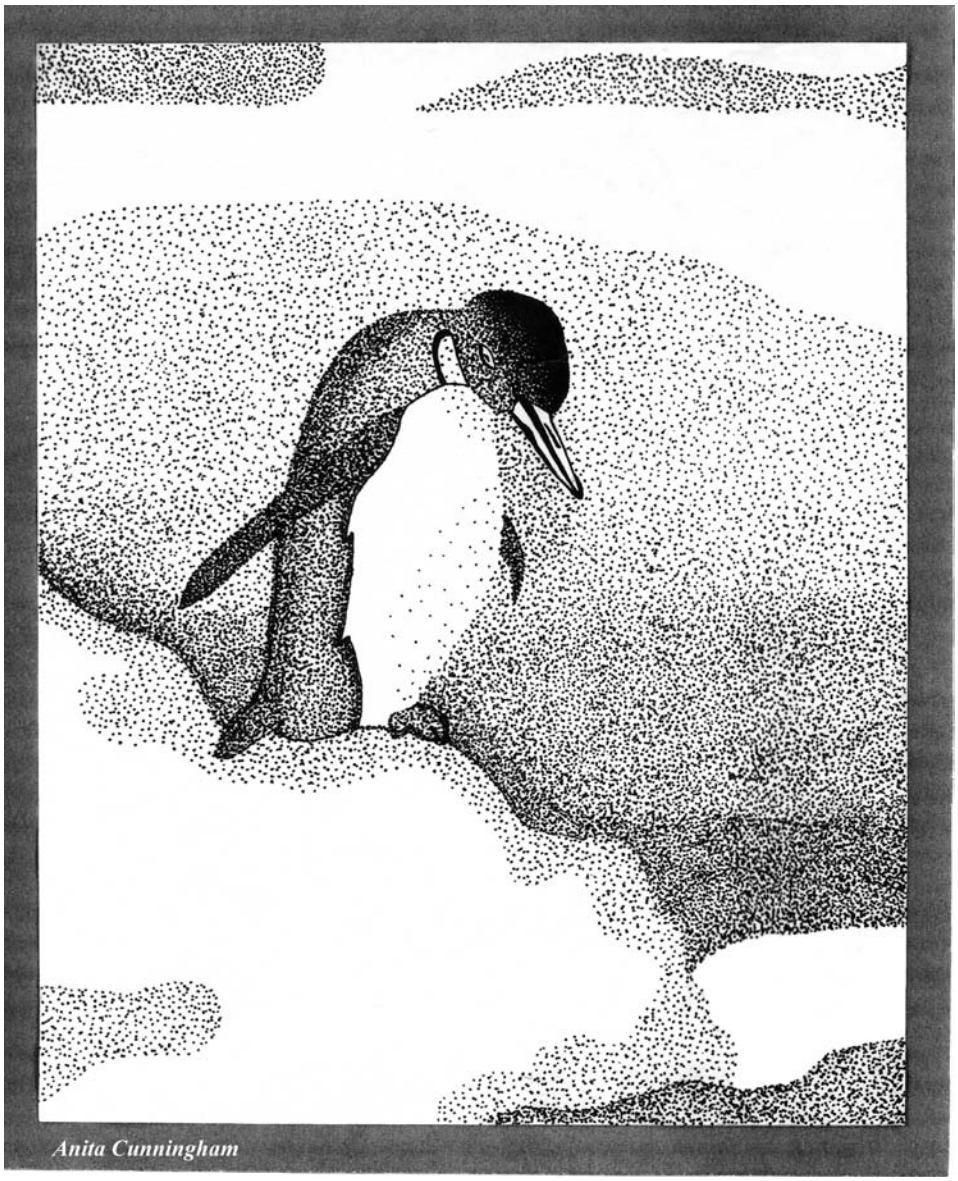

Anita Cunningham

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

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register@sos.state.tx.us

IN THIS ISSUE

Open Meetings

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

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

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

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

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

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

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

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

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

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-1110-GA

Requestor:

The Honorable Joshua Hamby

Howard County Attorney

Post Office Box 2096

Big Spring, Texas 79721

Re: Whether a commissioners court may require a permit and charge a fee for installing an access point to a county road (RQ-1110-GA)

Briefs requested by March 22, 2013

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

TRD-201300719
Katherine Cary
General Counsel
Office of the Attorney General
Filed: February 20, 2013

♦ ♦ ♦

Opinions

Opinion No. GA-0989

The Honorable Isidro R. Alaniz

49th Judicial District Attorney

Post Office Box 1343

Laredo, Texas 78042

Re: Whether a member of a governmental body may leave an open meeting to confer privately with employees of that governmental body (RQ-1083-GA)

S U M M A R Y

A private consultation between a member of a governmental body and an employee of that governmental body that does not take place within the hearing of a quorum of the other members of the governmental body does not, under the facts presented, constitute a "meeting" within the terms of chapter 551 of the Government Code.

Opinion No. GA-0990

The Honorable John J. Carona

Chair, Committee on Business & Commerce

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether an economic development corporation may provide health benefits to its employees through a risk pool established under chapter 172, Local Government Code (RQ-1084-GA)

S U M M A R Y

To the extent permitted by section 501.067 of the Local Government Code, an economic development corporation may obtain health benefits for its employees through a risk pool.

Opinion No. GA-0991

The Honorable Noble D. Walker, Jr.

Hunt County District Attorney

Post Office Box 441

Greenville, Texas 75403-0441

The Honorable Joel Littlefield

Hunt County Attorney

Post Office Box 1097

Greenville, Texas 75403-1097

Re: Whether a district judge may prohibit the director of a community supervision department from delegating his duties with regard to presentence investigations (RQ-1089-GA)

S U M M A R Y

Under article 42.12, section 9(a) of the Code of Criminal Procedure, a district judge does not have authority to order the director of a community supervisions and corrections department ("director") who does not supervise defendants placed on community supervision to personally conduct a presentence investigation report. Nor does a district judge have authority to order such a director to personally appear in court to present the ordered presentence investigation report.

A director may delegate report preparation and presentation duties that article 42.12, section 9(a), does not specifically impose on someone else.

Finally, a district judge likely is not authorized to order a specifically named supervision officer to conduct a presentence investigation report.

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

TRD-201300712

Katherine Cary
General Counsel
Office of the Attorney General
Filed: February 20, 2013

♦ ♦ ♦

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8065

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8065, concerning Disproportionate Share Hospital (DSH) Reimbursement Methodology.

Background and Justification

Section 355.8065 describes the eligibility requirements and reimbursement methodology for the Disproportionate Share Hospital (DSH) program. HHSC proposes to amend the rule to revise the way that the state's DSH allocation is distributed among eligible hospitals. The proposed distribution methodology creates two funding pools and assigns each DSH hospital a weighting factor. The weighting factors are intended to ensure the continued viability of the DSH program by flowing funds to hospitals owned by the local governmental entities that provide the majority of non-federal funds for payments to DSH hospitals. Additionally, HHSC proposes to amend the rule to identify new sources of non-federal funds for payments to eligible DSH hospitals.

Current DSH funding

Funding for the non-federal share of payments to hospitals under the DSH program currently comes from transfers of public funds by non-state governmental entities. The vast majority of non-federal funds under the DSH program originate in transfers from hospital districts in Bexar, Dallas, Ector, El Paso, Harris, Lubbock, Tarrant, and Travis counties. These governmental entities voluntarily transfer these funds and cannot be compelled to make such transfers under state law.

Developments impacting DSH funding

The ability of these transferring entities to continue funding the non-federal share of the state-wide DSH program, while fulfilling their fiduciary responsibilities to their local taxpayers, has been adversely impacted in recent years by several developments. Most significant among these is that in December 2011, HHSC discontinued supplemental payment programs (known as upper-payment-limit or UPL programs) and obtained federal approval for a demonstration waiver that creates new supplemental payment opportunities for hospitals. The entities that currently fund the DSH program are also the primary sources of non-federal funds for waiver payments in the regions in which they are located. Through the waiver, the entities can leverage their local funds to more effectively reimburse the uncompensated costs of the public hospitals that they own, as well as to reward local providers that demonstrate improvement in the quality of and access to healthcare. The use of these local funds in the waiver supports private safety-net hospitals and other providers as well as the public hospitals owned by the transferring districts.

Another development that impacts the ability of the transferring entities to continue to fully fund the non-federal share of DSH payments is that in federal fiscal year 2012, the federal medical assistance percentage applicable to DSH payments was reduced. As a result of this action, in order to maintain the same level of payments to DSH hospitals, the amount of non-federal funds that the transferring entities must contribute increased. Additionally, an increase in the number of eligible DSH hospitals in recent years has reduced the rate of return the transferring entities achieve on the funds they transfer to support the DSH program.

In light of these developments, the transferring entities informed HHSC that while they remain committed to contributing to the non-federal cost of the DSH program in 2013, they cannot provide the same level of funding that they did in 2012 or prior years.

Future DSH funding

HHSC proposes a multi-pronged approach to revising DSH funding in a way that will sustain this important supplemental payment program in the future and maximize the state's ability to draw down its federal DSH allocation. This approach includes the following features.

1. HHSC will determine the total amount of funds that may be distributed to eligible, qualifying DSH hospitals during the DSH program year, based on the federal DSH allotment for Texas (as determined by the Centers for Medicare and Medicaid Services) and available non-federal funds.

2. State-owned teaching hospitals, state-owned institutions for mental diseases (IMDs) and state chest hospitals may be funded up to 100 percent of their interim hospital-specific limits (HSLs), except that aggregate payments to state-owned IMDs may not exceed the federally mandated DSH reimbursement limits for IMD facilities. This proposal would ensure that these state-owned facilities access funds for uncompensated care through DSH rather than through the waiver and is intended to help address concerns that Texas will not fully expend its federal DSH allotment.

3. Remaining eligible, qualifying hospitals are divided into two categories: (1) hospitals in an area corresponding to a demon-

stration waiver Regional Healthcare Partnership (RHP) region that includes an urban public hospital owned by or under a lease contract with a public hospital district in Dallas, Ector, El Paso, Harris, Lubbock, Tarrant, Travis or Bexar counties; and (2) hospitals in an area corresponding to an RHP without an urban public hospital that is owned by or under a lease contract with one of the public hospital districts listed above. Protected funding pools for children's hospitals, rural hospitals, and non-state IMDs are proposed to be eliminated. The current DSH methodology allows hospitals in these protected pools to be reimbursed a greater percentage of their eligible uncompensated costs than other DSH hospitals not owned by transferring entities. This advantage is eliminated under the proposed rule. The current methodology also establishes a funding pool for urban public hospitals (i.e., those owned by a transferring entity). This funding pool is also proposed to be eliminated.

4. HHSC will establish a pool amount for each of the two categories. The pool amount for hospitals in an RHP with a transferring entity will be equal to available DSH funds where the non-federal share of funding comes from intergovernmental transfers from a transferring entity. The pool amount for hospitals in an RHP without a transferring entity will be equal to available DSH funds where the non-federal share of funding comes from a source other than intergovernmental transfers from a transferring entity. The proposed rule language provides discretion and flexibility for HHSC to use state or local funds for the non-federal share for this second pool.

5. Each transferring entity will provide the non-federal share of payments for hospitals within its RHP only. HHSC proposes this approach because the transferring entities have indicated that they can no longer justify the use of local funds to support payments to hospitals in all parts of the state. The proposed approach means that local funds will reimburse the uncompensated costs of serving residents in the community and region where the transferring entity is located, but not elsewhere.

6. In response to a request from rural governmental entities that operate public hospitals or lease their facilities to private operators, HHSC proposes allowing these entities to supplement the DSH payments to their hospitals. This opportunity is available whether or not the rural governmental entity is in an RHP containing a transferring entity.

7. HHSC proposes using weighting factors to reimburse a higher percentage of eligible uncompensated costs to hospitals owned by transferring entities than to those owned by non-transferring entities. The weighting factor assigned to each hospital owned by a transferring entity is determined taking into account the total non-federal share of DSH payments that the entity commits to fund. All other hospitals are assigned a weighting factor of 1.00. This approach is intended to more fairly balance the burden of funding the DSH program among all hospitals that benefit from DSH payments.

Other proposed changes

In addition to the changes described above, HHSC proposes the following amendments:

- Half of the DSH funds in each of the two funding pools are allocated based on weighted Medicaid days and half on weighted low-income days. This methodology, without weighting, is currently used to calculate payments to all DSH hospitals except payments to hospitals owned by transferring entities, which are currently allocated based solely on low-income days. The change to how DSH payments are allocated for transferring entities is proposed to enhance consistency in DSH calculations across different types of hospitals.

- Language is added to clarify that a hospital deemed to qualify for DSH must still meet the eligibility requirements and conditions of participation contained in the rule.

- After the 2014 DSH data year, hospitals will no longer be able to request that HHSC review adjudicated claims data from Medicaid contractors when there is a dispute between the hospital and a Medicaid contractor regarding the accuracy or completeness of the data. This change is proposed because hospitals already have the right to medical and administrative appeals of disputed adjudicated claims data before the DSH report is generated by the Medicaid contractors. Additionally, this change is proposed to reduce the administrative time necessary to process DSH applications and finalize payment amounts.

- The current rule gives a hospital that does not meet DSH qualification or eligibility requirements 15 days to request a review of HHSC's determination. The proposed rule expands that period to 30 days, but does not allow additional time for the hospital to submit supporting documentation, as does the current rule.

- The proposed rule adds a description of the method HHSC will use to redistribute DSH overpayments. Generally, recovered funds will be redistributed among eligible hospitals in the same category as the hospital from which the overpayment is recouped. However, when the overpayment to a rural hospital or rural-financed hospital was funded by the governmental entity that owns the hospital, recovered funds will not be redistributed to other DSH hospitals, but will instead be returned to the local and federal governmental entities.

- The proposed rule includes other technical corrections, numbering revisions and non-substantive changes to make the rule more readable and understandable.

Section-by-Section Summary

Proposed §355.8065(b)(14) amends the definition of "Hospital-specific limit" to distinguish between "interim" and "final" hospital-specific limits and to clarify the data used to calculate each.

HHSC proposes removing the definition of "Ratio of cost to charges (inpatient and outpatient)," former §355.8065(b)(32), because that term is not used in this rule.

Proposed new §355.8065(b)(32) adds the definition of "Regional Healthcare Partnership (RHP) area" to mean a geographic area that corresponds to an RHP region described in the waiver rules.

Proposed §355.8065(b)(34) adds the definition of "Rural public hospital."

Proposed §355.8065(b)(35) adds the definition of "Rural public-financed hospital."

Proposed §355.8065(d)(4) adds language clarifying that a hospital deemed to qualify for the DSH program must still meet the eligibility requirements and conditions of participation set forth in the rules.

Proposed §355.8065(f) adds language to clarify the DSH program years to which interim and final hospital-specific limits calculated by HHSC apply.

Proposed §355.8065(g)(1) adds state-owned IMDs to the categories of state hospitals that may receive DSH payments up to their interim hospital-specific limits, except the aggregate pay-

ments to state-owned IMDs cannot exceed the federally mandated reimbursement limits for IMD facilities.

HHSC proposes removing §355.8065(g)(2), relating to distribution of available DSH funds to IMDs, in its entirety. Non-state IMDs are proposed to be reimbursed from the non-state funding pools based on the RHP in which they are located. Payments to non-state IMDs are also limited by the federally mandated reimbursement limits for IMD facilities.

Proposed §355.8065(h)(1)(A) places responsibility on the hospital to verify with Medicaid contractors the accuracy and completeness of the hospital's adjudicated data that will be submitted to HHSC for use in determining DSH eligibility and payment amounts.

HHSC proposes removing §355.8065(h)(1)(B) because it is duplicative of language proposed to be added in subparagraph (A).

Proposed new §355.8065(h)(1)(B) and (C) clarify that after DSH program year 2014, HHSC will not consider a hospital's request for review when there is a dispute between the hospital and a Medicaid contractor regarding adjudicated data.

Proposed §355.8065(h)(1)(C) clarifies that for DSH program year 2013 and 2014 only, a request from a hospital for HHSC to review a dispute with a Medicaid contractor must be submitted to HHSC Rate Analysis in writing within 15 days of receipt of final corrected data from the contractor.

HHSC proposes removing §355.8065(h)(1)(E) directing the reader to subsection (j) related to a hospital's right to request review of eligibility, qualification and estimated payment amounts. This language is no longer relevant to the content of subsection (h) because HHSC proposes removing a hospital's right to request review of data submitted by Medicaid contractors.

Proposed §355.8065(h)(2) removes language describing funding pools for children's, rural, urban public, and all other hospitals. Proposed new language provides for pools for payments to two new categories of hospital and describes the source of the non-federal share of payments from each pool. The first pool is comprised of hospitals in an RHP with an urban public hospital and the funding is from the entities that own the urban public hospitals. The second pool is comprised of hospitals in all other RHPs and the funding comes from a source other than the entities funding the first pool.

Proposed §355.8065(h)(3)(A) assigns weighting factors to each urban public hospital.

Proposed §355.8065(h)(3)(B) provides that all other hospitals will be assigned a weighting factor of 1.00.

Proposed §355.8065(h)(3)(C) authorizes HHSC to change weighting factors as needed to address changes in program size.

Proposed §355.8065(h)(4) describes the distribution and payment calculation methodology for all DSH hospitals and explains the method HHSC will use to calculate weighted Medicaid inpatient days and weighted low-income days.

HHSC proposes removing §355.8065(h)(5), concerning the distribution and payment calculation methodology for urban public hospitals, because the separate pool for that category of hospital is proposed to be eliminated.

HHSC proposes removing §355.8065(h)(6), concerning the reconciliation of 2012 DSH payments, because 2012 DSH payment reconciliation has already occurred.

Proposed §355.8065(h)(6) describes the methodology for allowing a governmental entity that owns a rural public hospital or that leases rural public facilities to a private hospital operator, to fund additional DSH payments to the hospital, up to the hospital-specific limit.

Proposed §355.8065(h)(8) clarifies that HHSC will give notice of funding pool amounts described in the subsection.

Proposed §355.8065(h)(9) describes the methodology HHSC will use to reduce payments to IMDs if annual payment amounts will exceed the federally mandated IMD limit.

Proposed §355.8065(h)(10) authorizes HHSC to determine how additional sources of public funding, if any are identified, will be used in the distribution of DSH payments.

Proposed §355.8065(j) eliminates the opportunity for a hospital to request a review of estimated payment amounts. The change is proposed because the estimated payment amount is a function of the data provided by the Medicaid contractors and self-reported by the hospital, and HHSC will no longer revise that data after submission.

Proposed §355.8065(j)(3) expands to 30 the number of days within which a hospital must request a review of qualification and eligibility determinations.

Proposed §355.8065(j)(3)(D) adds language reinforcing the requirement that the review and adjudication of claims is between the hospital and the Medicaid contractors before the final report is submitted to HHSC.

HHSC proposes eliminating §355.8065(j)(3)(E) that provides hospitals 30 days to submit documentation supporting a request for review. A hospital will be required to submit supporting documentation concurrent with the request for review.

Proposed §355.8065(l) clarifies the methodology HHSC will use to redistribute recovered funds when there is a DSH overpayment.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for the first five years the proposed amendment is in effect, there may be additional costs to state government as a result of enforcing or administering the proposed amendment if state funds are identified as a potential source of non-federal funds for DSH payments. It is not possible to estimate the additional costs, if any, at this time.

As for the potential fiscal impact on local governments, the proposed rule (like the current rule) will increase revenues to local governments that own and operate a public hospital that qualifies for and receives DSH payments under the proposed methodology and are not responsible for supplying the state share of DSH payments. However, the fiscal impact to other local governments will be a function of the amount of intergovernmental transfers (IGTs), if any, they elect to fund under the proposed rule. Specifically, the hospital districts in Dallas, Ector, El Paso, Harris, Lubbock, Tarrant, Travis, and Bexar counties will receive allocations of the state's share of payments that each hospital district may elect to fund. To the degree that these local public entities elect to fund IGTs, these entities will experience a different fiscal impact than local governments that do not supply IGTs to fund DSH payments. The decision to fund an IGT and the amount of such transfer is solely within the discretion of each transferring public entity and subject to the availability of local public funds. The fiscal impact of the proposed rules, like the

current rules, is therefore subject to local decision making. Accordingly, while HHSC can estimate the maximum financial allocation to each transferring public entity, it is unable to estimate the ultimate fiscal impact--positive or negative--to each transferring public entity.

The proposed rule does not increase the potential financial obligations of the hospital districts of Dallas, Ector, El Paso, Harris, Tarrant, Travis, and Bexar counties relative to their potential obligations under the current DSH rule. However, if adopted without changes, the proposed rule will result in a higher allocation of intergovernmental transfer (IGT) responsibility for the Lubbock County Hospital District than it has under the current DSH methodology.

Again, however, because the amount of intergovernmental transfers a hospital district makes is within each district's discretion to determine, and because of the variability of the federal DSH allocation, the number of DSH-eligible hospitals, and the amount of DSH payments from year-to-year, HHSC cannot accurately project the impact on these local governments beyond the maximum financial allocation to each transferring public entity.

The rule may result in increased revenues for rural public hospitals or rural public-financed hospitals because the governmental entities that own the hospitals now have the opportunity, if they choose, to provide their own intergovernmental transfer of funds to increase DSH payments up to the hospital-specific limit. It is unknown at this time the extent to which these local governmental entities will participate in providing additional funding to increase DSH payments to their hospitals.

Small Business and Micro-Business Impact Analysis

Under §2006.002 of the Texas Government Code, a state agency proposing an administrative rule that may have an adverse economic effect on small or micro-businesses must prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement estimates the number of small businesses subject to the rule and projects the economic impact of the rule on small businesses. The regulatory flexibility analysis describes the alternative methods the agency considered to achieve the purpose of the proposed rule while minimizing adverse effects on small businesses.

HHSC has determined that the rule will not have an adverse economic effect on either small businesses or micro-businesses, or both, because no hospital meeting the definition of a small or micro-business applied to receive DSH funding in 2013.

There are no anticipated economic costs to persons who are required to comply with the proposed amendment.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each year of the first five years the amendment is in effect, the public benefits expected as a result of enforcing the amendment will be to ensure continued funding of the DSH program through locally generated intergovernmental transfers and to ensure that the state will continue to conform to the federal requirements relating to the DSH program. In addition, the revisions included in the rule will assist interested parties in understanding the DSH reimbursement methodology by providing clearer language that is easier to understand.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Hearing

HHSC will conduct a public hearing on Tuesday, March 19, 2013, beginning at 9:00 a.m., to receive comments on the proposed amendments to §355.8065. 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. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

Public Comment

Written comments on the proposal may be submitted to Carolyn Pratt, Director of Hospital Rate Analysis, Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, by fax to (512) 491-1467, or by e-mail to costinformation@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

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

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

§355.8065. Disproportionate Share Hospital [~~(DSH)~~] Reimbursement Methodology.

(a) Introduction. Hospitals participating in the Texas Medicaid [~~Medical Assistance (Medicaid)~~] program that meet the conditions of participation and that serve a disproportionate share of low-income patients are eligible for reimbursement from the disproportionate share hospital (DSH) fund. The Texas Health and Human Services Commission (HHSC) will establish each hospital's eligibility

for and amount of reimbursement using the methodology described in this section.

(b) Definitions.

(1) Adjudicated claim--A hospital claim for payment for a covered Medicaid service that is paid or adjusted by HHSC or another payer.

(2) Available DSH funds--The total amount of funds that may be distributed to eligible qualifying DSH hospitals during the DSH program year, based on the federal DSH allotment for Texas (as determined by the Centers for Medicare and Medicaid Services) and available non-federal funds.

(3) Bad debt--A debt arising when there is nonpayment on behalf of an individual who has third-party coverage.

(4) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(5) Charity care--The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to indigent individuals, either directly or through other nonprofit or public outpatient clinics, hospitals, or health care organizations. A hospital must set the income level for eligibility for charity care consistent with the criteria established in §311.031, Texas Health and Safety Code.

(6) Charity charges--Total amount of hospital charges for inpatient and outpatient services attributed to charity care in a DSH data year. These charges do not include bad debt charges, contractual allowances, or discounts given to other legally liable third-party payers.

(7) Children's hospital--A hospital within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(8) Disproportionate share hospital (DSH)--A hospital identified by HHSC that meets the DSH program conditions of participation and that serves a disproportionate share of Medicaid or indigent patients.

(9) DSH data year--A twelve-month period, two years before the DSH program year, from which HHSC will compile data to determine DSH program qualification and payment.

(10) DSH program year--The twelve-month period beginning October 1 and ending September 30.

(11) Dually eligible patient--A patient who is simultaneously eligible for Medicare and Medicaid.

(12) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(13) HHSC--The Texas Health and Human Services Commission or its designee.

(14) Hospital-specific limit--The maximum amount applicable to [~~during~~] a DSH program year that a hospital may receive in reimbursement for the cost of providing services to individuals who are Medicaid eligible or uninsured. The hospital-specific limit is calculated using the methodology described in §355.8066 of this title (relating to Hospital-Specific Limit Methodology).

(A) Interim hospital-specific limit--Applies to payments that will be made during the DSH program year and is calculated using the methodology described in §355.8066 of this title using interim cost and payment data from the DSH data year.

(B) Final hospital-specific limit--Applies to payments made during a prior DSH program year and is calculated using the methodology as described in §355.8066 of this title using actual cost and payment data from the DSH program year.

(15) Independent certified audit--An audit that is conducted by an auditor that operates independently from the Medicaid agency and the audited hospitals and that is eligible to perform the DSH audit required by CMS.

(16) Indigent individual--An individual classified by a hospital as eligible for charity care.

(17) Inpatient day--Each day that an individual is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere. The term includes observation days, rehabilitation days, psychiatric days, and newborn days. The term does not include swing bed days or skilled nursing facility days.

(18) Inpatient revenue--Amount of gross inpatient revenue derived from the most recent completed Medicaid cost report or reports related to the applicable DSH data year. Gross inpatient revenue excludes revenue related to the professional services of hospital-based physicians, swing bed facilities, skilled nursing facilities, intermediate care facilities, other nonhospital revenue, and revenue not identified by the hospital.

(19) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(20) Low-income days--Number of inpatient days attributed to indigent patients.

(21) Low-income utilization rate--A DSH qualification criterion calculated as described in subsection (d)(2) of this section.

(22) Mean Medicaid inpatient utilization rate--The average of Medicaid inpatient utilization rates for all hospitals that have received a Medicaid payment for an inpatient claim, other than a claim for a dually eligible patient, that was adjudicated during the relevant DSH data year.

(23) Medicaid contractor--Fiscal agents and managed care organizations with which HHSC contracts to process data related to the Medicaid program.

(24) Medicaid cost report--Hospital and Hospital Health Care Complex Cost Report (Form CMS 2552), also known as the Medicare cost report.

(25) Medicaid hospital--A hospital meeting the qualifications set forth in §354.1077 of this title (relating to Provider Participation Requirements) to participate in the Texas Medicaid program.

(26) Medicaid inpatient utilization rate--A DSH qualification criterion calculated as described in subsection (d)(1) of this section.

(27) MSA--Metropolitan Statistical Area as defined by the United States Office of Management and Budget. MSAs with populations greater than or equal to 137,000, according to the most recent decennial census, are considered "the largest MSAs."

(28) Obstetrical services--The medical care of a woman during pregnancy, delivery, and the post-partum period provided at the hospital listed on the DSH application.

(29) PMSA--Primary Metropolitan Statistical Area as defined by the United States Office of Management and Budget.

(30) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(31) Ratio of cost-to-charges (inpatient only)--A ratio that covers all applicable hospital costs and charges relating to inpatient care. This ratio does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(32) Regional Healthcare Partnership (RHP) area--A geographic area that corresponds to the geographic area of one of the Regional Healthcare Partnerships described in the Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver.

[~~(32) Ratio of cost-to-charges (inpatient and outpatient)--A Medicaid cost report-derived cost center ratio that covers all applicable hospital costs and charges relating to patient care, inpatient and outpatient. This ratio is used in calculating the hospital-specific limit and does not distinguish between payer types such as Medicare, Medicaid, or private pay.~~]

(33) Rural hospital--A hospital located outside an MSA or a PMSA.

(34) Rural public hospital--A hospital owned and operated by a governmental entity that is located in a county with 500,000 or fewer persons, based on the most recent decennial census.

(35) Rural public-financed hospital--A hospital operating under a lease from a governmental entity in which the hospital and governmental entity are both located in the same county with 500,000 or fewer persons, based on the most recent decennial census.

(36) [~~(34)~~] State chest hospital--A public health facility operated by the Department of State Health Services designated for the care and treatment of patients with tuberculosis.

(37) [~~(35)~~] State-owned teaching hospital--A hospital owned and operated by a state university or other state agency.

(38) [~~(36)~~] Third-party coverage--Creditable insurance coverage consistent with the definitions in 45 Code of Federal Regulations (CFR) Parts 144 and 146, or coverage based on a legally liable third-party payer.

(39) [~~(37)~~] Total Medicaid inpatient days--Total number of inpatient days based on adjudicated claims data for covered services for the relevant DSH data year.

(A) The term includes:

(i) Medicaid-eligible days of care adjudicated by managed care organizations;

(ii) days that were denied payment for spell-of-illness limitations;

(iii) days attributable to individuals eligible for Medicaid in other states, including dually eligible patients;

(iv) days with adjudicated dates during the period; and

(v) days for dually eligible patients for purposes of the calculation in subsection (d)(1) of this section.

(B) The term excludes:

(i) days attributable to Medicaid-eligible patients ages 21 through 64 in an IMD;

(ii) days denied for late filing and other reasons; and

(iii) days for dually eligible patients for purposes of the calculation in subsections (d)(3) and (h)(4) [~~(2), (3), and (5)~~] of this section.

(40) [~~(38)~~] Total Medicaid inpatient hospital payments--Total amount of Medicaid funds that a hospital received for adjudicated claims for covered inpatient services during the DSH data year. The term includes payments that the hospital received:

(A) for covered inpatient services from managed care organizations; and

(B) for patients eligible for Medicaid in other states.

(41) [~~(39)~~] Total state and local payments--Total amount of state and local payments that a hospital received for inpatient care during the DSH data year. The term includes payments under state and local programs that are funded entirely with state general revenue funds and state or local tax funds, such as County Indigent Health Care, Children with Special Health Care Needs, and Kidney Health Care. The term excludes payment sources that contain federal dollars such as Medicaid payments, Children's Health Insurance Program (CHIP) payments funded under Title XXI of the Social Security Act, Substance Abuse and Mental Health Services Administration, Ryan White Title I, Ryan White Title II, Ryan White Title III, and contractual discounts and allowances related to TRICARE, Medicare, and Medicaid.

(42) [~~(40)~~] Urban hospital--A hospital located inside an MSA or PMSA.

(43) [~~(41)~~] Urban public hospital--An urban hospital that is owned by or under a lease contract with one of the following entities: the Dallas County Hospital District, the Ector County Hospital District, the El Paso County Hospital District, the Harris County Hospital District, the Lubbock County Hospital District, the Tarrant County Hospital District, Central Health District of Travis County, or the University Health System of Bexar County.

(c) Eligibility. To be eligible to participate in the DSH program, a hospital must:

(1) be enrolled as a Medicaid hospital in the State of Texas;

(2) have received a Medicaid payment for an inpatient claim, other than a claim for a dually eligible patient, that was adjudicated during the relevant DSH data year; and

(3) apply annually by completing the application packet received from HHSC by the deadline specified in the packet.

(A) Only a hospital that meets the condition specified in paragraph (2) of this subsection will receive an application packet from HHSC.

(B) The application may request self-reported data that HHSC deems necessary to determine each hospital's eligibility. HHSC may audit self-reported data.

(C) A hospital that fails to submit a completed application by the deadline specified by HHSC will not be eligible to participate in the DSH program in the year being applied for or to appeal HHSC's decision.

(D) For purposes of DSH eligibility, a multi-site hospital is considered one provider unless it submits separate Medicaid cost reports for each site. If a multi-site hospital submits separate Medicaid

cost reports for each site, for purposes of DSH eligibility, it must submit a separate DSH application for each eligible site.

(E) HHSC will consider a merger of two or more hospitals for purposes of the DSH program for any hospital that submits a CMS tie-in notice prior to the deadline for submission of the DSH application. Otherwise, HHSC will determine the merged entity's eligibility for the subsequent DSH program year. Until the time that the merged hospitals are determined eligible for payments as a merged hospital, each of the merging hospitals will continue to receive any DSH payments to which it was entitled prior to the merger.

(d) Qualification. For each DSH program year, in addition to meeting the eligibility requirements, applicants must meet at least one of the following qualification criteria, which are determined using information from a hospital's application, from HHSC, or from HHSC's Medicaid contractors, as specified by HHSC:

(1) Medicaid inpatient utilization rate. A hospital's Medicaid inpatient utilization rate is calculated by dividing the hospital's total Medicaid inpatient days by its total inpatient census days for the DSH data year.

(A) Rural hospital: A rural hospital must have a Medicaid inpatient utilization rate greater than the mean Medicaid inpatient utilization rate for all Medicaid hospitals.

(B) Urban hospital: An urban hospital must have a Medicaid inpatient utilization rate that is at least one standard deviation above the mean Medicaid inpatient utilization rate for all Medicaid hospitals.

(2) Low-income utilization rate. A hospital must have a low-income utilization rate greater than 25 percent.

(A) The low-income utilization rate is the sum (expressed as a percentage) of the fractions calculated in clauses (i) and (ii) of this subparagraph:

(i) The sum of the total Medicaid inpatient hospital payments and the total state and local payments paid to the hospital for inpatient care in the DSH data year, divided by a hospital's gross inpatient revenue multiplied by the hospital's ratio of cost-to-charges (inpatient only) for the same period: (Total Medicaid Inpatient Hospital Payments + Total State and Local Payments)/(Gross Inpatient Revenue x Ratio of Costs to Charges).

(ii) Inpatient charity charges in the DSH data year minus the amount of payments for inpatient hospital services received directly from state and local governments, excluding all Medicaid payments, in the DSH data year, divided by the gross inpatient revenue in the same period: (Total Inpatient Charity Charges - Total State and Local Payments)/Gross Inpatient Revenue.

(B) HHSC will determine the ratio of cost-to-charges (inpatient only) by using information from the appropriate worksheets of each hospital's Medicaid cost report or reports that correspond to the DSH data year. In the absence of a Medicaid cost report for that period, HHSC will use the latest available submitted Medicaid cost report or reports.

(3) Total Medicaid inpatient days.

(A) A hospital must have total Medicaid inpatient days at least one standard deviation above the mean total Medicaid inpatient days for all hospitals participating in the Medicaid program, except;

(B) A hospital in an urban county with a population of 290,000 persons or fewer, according to the most recent decennial census, must have total Medicaid inpatient days at least 70 percent of the sum of the mean total Medicaid inpatient days for all hospitals in this subset plus one standard deviation above that mean.

(C) Days for dually eligible patients are not included in the calculation of total Medicaid inpatient days under this paragraph.

(4) Children's hospitals, state-owned teaching hospitals, and state chest hospitals. Children's hospitals, state-owned teaching hospitals, and state chest hospitals that do not otherwise qualify as disproportionate share hospitals under this subsection will be deemed to qualify [~~disproportionate share hospitals~~]. A hospital deemed to qualify must still meet the eligibility requirements under subsection (c) of this section and the conditions of participation under subsection (e) of this section.

(5) Merged hospitals. Merged hospitals are subject to the application requirement in subsection (c)(3)(E) of this section. HHSC will aggregate the data used to determine qualification under this subsection from the merged hospitals to determine whether the single Medicaid provider that results from the merger qualifies as a Medicaid disproportionate share hospital.

(e) Conditions of participation. HHSC will require each hospital to meet and continue to meet for each DSH program year the following conditions of participation:

(1) Two-physician requirement.

(A) In accordance with Social Security Act §1923(e)(2), a hospital must have at least two licensed physicians (doctor of medicine or osteopathy) who have hospital staff privileges and who have agreed to provide nonemergency obstetrical services to individuals who are entitled to medical assistance for such services.

(B) Subparagraph (A) of this paragraph does not apply if the hospital:

(i) serves inpatients who are predominantly under 18 years of age; or

(ii) was operating but did not offer nonemergency obstetrical services as of December 22, 1987.

(C) A hospital must certify on the DSH application that it meets the conditions of either subparagraph (A) or (B) of this paragraph, as applicable, at the time the DSH application is submitted.

(2) Medicaid inpatient utilization rate. At the time of qualification and during the DSH program year, a hospital must have a Medicaid inpatient utilization rate, as calculated in subsection (d)(1) of this section, of at least one percent.

(3) Trauma system.

(A) The hospital must be in active pursuit of designation or have obtained a trauma facility designation as defined in §780.004 and §§773.111 - 773.120, Texas Health and Safety Code, respectively, and consistent with 25 TAC §157.125 (relating to Requirements for Trauma Facility Designation) and §157.131 (relating to the Designated Trauma Facility and Emergency Medical Services Account). A hospital that has obtained its trauma facility designation must maintain that designation for the entire DSH program year.

(B) HHSC will receive an annual report from the Office of EMS/Trauma Systems Coordination regarding hospital participation in regional trauma system development, application for trauma facility designation, and trauma facility designation or active pursuit of designation status before final qualification determination for interim DSH payments. HHSC will use this report to confirm compliance with this condition of participation by a hospital applying for DSH funds.

(4) Maintenance of local funding effort. A hospital district in one of the state's largest MSAs or in a PMSA must not reduce local tax revenues to its associated hospitals as a result of disproportionate share funds received by the hospital. For this provision to apply, the hospital must have more than 250 licensed beds.

(5) Retention of and access to records. A hospital must retain and make available to HHSC and its designee records and accounting systems related to DSH data for at least five years from the end [~~start~~] of each DSH program year in which the hospital qualifies, or until an open audit is completed, whichever is later.

(6) Compliance with audit requirements. A hospital must agree to comply with the audit requirements described in subsection (o) of this section.

(7) Merged hospitals. Merged hospitals are subject to the application requirement in subsection (c)(3)(E) of this section. If HHSC receives the CMS tie-in notice prior to the deadline for submission of the DSH application, the merged entity must meet all conditions of participation. If HHSC does not receive the CMS tie-in notice prior to the deadline for submission of the DSH application, any proposed merging hospitals that are receiving DSH payments must continue to meet all conditions of participation as individual hospitals to continue receiving DSH payments for the remainder of the DSH program year.

(8) A hospital receiving payments under this section must notify HHSC's Rate Analysis Department within 30 days of changes in ownership, operation, provider identifier, designation as a trauma facility or as a children's hospital, or any other change that may affect the hospital's continued eligibility, qualification, or compliance with DSH conditions of participation. At the request of HHSC, the hospital must submit any documentation supporting the change.

(f) Hospital-specific limit calculation. HHSC uses the methodology described in §355.8066 of this title to calculate an interim hospital-specific limit for each Medicaid hospital that applies and qualifies to receive payments during the DSH program year under this section, and a final hospital-specific limit for each hospital that received [~~receives~~] payments in a prior program year under this section.

(g) Distribution of available DSH funds. HHSC will distribute the available DSH funds as defined in subsection (b)(2) of this section among eligible, qualifying DSH hospitals using the following priorities:

(1) State-owned teaching hospitals, state-owned IMDs, and state chest hospitals. HHSC may reimburse state-owned teaching hospitals, state-owned IMDs, and state chest hospitals an amount less than or equal to their interim hospital-specific limits, except that aggregate payments to state-owned IMDs may not exceed federally mandated reimbursement limits for IMDs.

~~[(2) IMDs.]~~

~~[(A) Aggregate payments made to IMD facilities statewide are subject to federally mandated reimbursement limits for IMD facilities.]~~

~~[(B) State-owned IMDs.]~~

~~*[(i)* From the amount determined in subparagraph (A) of this paragraph, HHSC will deduct the amount of the Non-State-Owned IMD Pool determined in subparagraph (C)(i) of this paragraph to derive the amount available for distribution to state-owned IMDs.]~~

~~*[(ii)* A state-owned IMD that satisfies the DSH requirements will receive 100 percent of its interim hospital-specific limit within the amount determined in clause (i) of this subparagraph. If the amount described in clause (i) of this subparagraph is not sufficient to fully fund all state-owned IMDs to their interim hospital-specific limits, HHSC will pay all such IMDs proportionately based on each IMD's percentage of the total interim hospital-specific limit for all such IMDs.]~~

~~[(C) Non-state-owned IMDs.]~~

~~*[(i)* The aggregate amount available for distribution to non-state-owned IMDs (the Non-State-Owned IMD Pool) is limited to 1.88% of the amount described in subparagraph (A) of this paragraph.]~~

~~*[(ii)* Payment to each non-state-owned IMD will be proportionately reduced:]~~

~~*[(I)* to stay within the limitations described in clause (i) of this subparagraph; or]~~

~~*[(II)* if a governmental entity does not transfer sufficient intergovernmental transfer funds (IGT) to fund all non-state-owned IMDs to the amount described in clause (i) of this subparagraph.]~~

~~*[(iii)* For DSH program year 2012, the amount of the Non-State-Owned IMD Pool determined in clause (i) of this subparagraph for all non-state-owned IMDs has already been paid, so non-state-owned IMDs will not receive additional DSH payments for the program year.]~~

(2) [~~(3)~~] Other [~~non-state~~] hospitals. HHSC distributes the remaining available DSH funds, if any, to other qualifying hospitals using the methodology described in subsection (h) of this section. The remaining available DSH funds equal the lesser of the funds as defined in subsection (b)(2) of this section less funds expended under paragraph [~~paragraphs~~] (1) [~~and (2)~~] of this subsection or the sum of remaining qualifying hospitals' interim hospital-specific limits.

(h) DSH payment calculation.

(1) Medicaid data verification.

(A) Prior to [~~On or about~~] April 15 of each DSH program year, hospitals must communicate directly with the appropriate Medicaid contractors to request any corrections to [~~HHSC will make available upon request for each Medicaid participating hospital a report of~~] the hospital's adjudicated data [~~received from Medicaid contractors~~] reflecting the hospital's Medicaid days, Medicaid charges, and Medicaid payments during the DSH data year.

~~[(B) A hospital must communicate directly with the appropriate Medicaid contractors to request correction of any data the hospital believes is inaccurate or incomplete.]~~

(B) [~~(C)~~] Each Medicaid contractor will submit a final report to HHSC by April [~~July~~] 15 of each year or a date thereafter as specified by HHSC, which will include all agreed-upon corrections resulting from requests submitted by hospitals to the Medicaid contractors as described in subparagraph (A) of this paragraph. [~~Unless a hospital contacts HHSC pursuant to subparagraph (D) of this paragraph,~~] HHSC will use the final [~~corrected~~] report sent to HHSC from the Medicaid contractors for DSH calculations described in this section. Except for the calculations for DSH program years 2013 and 2014 and as described in subparagraph (C) of this paragraph, HHSC will not consider a hospital's request for review of adjudicated data and will not revise a hospital's adjudicated data contained in the final report.

(C) [~~(D)~~] For the calculations for DSH program years 2013 and 2014 only, at [~~At~~] a hospital's written request submitted to HHSC Rate Analysis within 15 calendar days of the hospital's receipt

of the final, corrected data for the DSH data year, HHSC will review instances in which a hospital and a Medicaid contractor cannot resolve disputes concerning data included in or excluded from the final report. HHSC will make the final determination in such a case and notify the hospital of the final determination.

[(E) A hospital's right to request a review of eligibility, qualification and estimated payment amount is addressed in subsection (j) of this section.]

(2) Allocation of available DSH funds by category of hospital. From the amount of remaining available DSH funds determined in subsection (g)(2)[(3)] of this section, HHSC will establish a pool amount for DSH payments to each of the following categories of hospital:

(A) Hospitals in an RHP area with an urban public hospital. The pool amount for hospitals in an RHP area with an urban public hospital is equal to that portion of the amount of remaining available DSH funds determined in subsection (g)(2) of this section where the non-federal share of funding comes from intergovernmental transfers from the governmental entity that owns an urban public hospital as defined in subsection (b)(43) of this section.

(B) Hospitals in all other RHP areas. The pool amount for hospitals in all other RHP areas is equal to that portion of the amount of remaining available DSH funds determined in subsection (g)(2) of this section where the non-federal share of funding comes from a source other than intergovernmental transfers from a governmental entity that owns an urban public hospital.

[(A) Children's hospitals. The amount of the Children's Hospital Pool is 8.36% of the amount determined in subsection (g)(3) of this section.]

[(B) Rural hospitals. The amount of the Rural Hospital Pool is 5.98% of the amount determined in subsection (g)(3) of this section.]

[(C) Urban public hospitals. The amount of the Urban Public Hospital Pool is 51.25% of the amount determined in subsection (g)(3) of this section.]

[(D) Other hospitals. The amount of the pool for all hospitals not described in subparagraphs (A) - (C) of this paragraph is 34.41% of the amount determined in subsection (g)(3) of this section.]

(3) Weighting factors.

(A) HHSC will assign each urban public hospital a weighting factor based on its RHP area as follows:

(i) RHP Area 3 Urban Public Hospital Weighting Factor is 3.4316.

(ii) RHP Area 6 Urban Public Hospital Weighting Factor is 4.1960.

(iii) RHP Area 7 Urban Public Hospital Weighting Factor is 3.3740.

(iv) RHP Area 9 Urban Public Hospital Weighting Factor is 2.2556.

(v) RHP Area 10 Urban Public Hospital Weighting Factor is 2.6416.

(vi) RHP Area 12 Urban Public Hospital Weighting Factor is 3.8331.

(vii) RHP Area 14 Urban Public Hospital Weighting Factor is 2.3346.

(viii) RHP Area 15 Urban Public Hospital Weighting Factor is 3.1390.

(B) All other DSH hospitals not described in subparagraph (A) of this paragraph will be assigned a weighting factor of 1.0000.

(C) HHSC may change the weighting factors as needed in the DSH program to address changes in program size.

[(3) HHSC will give notice of the amounts determined in subsection (g)(2)(C)(i) of this section and in paragraph (2) of this subsection.]

(4) Distribution and payment calculation [methodology for Children's Hospitals, Rural Hospitals, and Other Hospitals].

(A) For each category of hospital described in paragraph [paragraphs] (2)(A) and [,] (B)[, and (D)] of this subsection, HHSC will divide the amount of the associated pool into two equal parts:

(i) One half of the funds will reimburse each hospital in that category based on its percentage of the aggregate weighted Medicaid inpatient days for all hospitals in that category.

(ii) One half of the funds will reimburse each hospital in that category based on its percentage of the aggregate weighted low-income days for all hospitals in that category.

(B) HHSC will calculate each hospital's total weighted Medicaid inpatient days and total weighted low-income days as follows.

(i) Weighted Medicaid inpatient days are equal to the hospital's Medicaid inpatient days multiplied by the appropriate weighting factor from paragraph (3) of this subsection.

(ii) Weighted low-income days are equal to the hospital's low-income days multiplied by the appropriate weighting factor from paragraph (3) of this subsection.

(C) Using the results in subparagraph (B) of this paragraph, HHSC will:

(i) divide each hospital's total weighted Medicaid inpatient days by the sum of weighted Medicaid inpatient days for all hospitals in the same category to obtain a percentage;

(ii) multiply each hospital's percentage calculated in clause (i) of this subparagraph by the amount determined in subparagraph (A)(i) of this paragraph;

(iii) divide each hospital's total weighted low-income days by the sum of weighted low-income days for all hospitals in the same category to obtain a percentage;

(iv) multiply each hospital's percentage calculated in clause (iii) of this subparagraph by the amount determined in subparagraph (A)(ii) of this paragraph; and

(v) sum the results of clauses (ii) and (iv) of this subparagraph to determine each hospital's projected annual payment amount.

(I) The projected annual payment amount may not exceed a hospital's interim hospital-specific limit.

(II) Any amount above a hospital's interim hospital-specific limit will be redistributed to other hospitals as described in paragraph (5) [(7)] of this subsection.

[(5) Distribution and payment calculation methodology for urban public hospitals. For the hospitals described in paragraph (2)(C) of this subsection, HHSC will:]

[(A) sum the low-income days for all hospitals in that category;]

[(B) divide each hospital's low income days by the result in subparagraph (A) of this paragraph; and]

[(C) multiply the result in subparagraph (B) of this paragraph by the pool amount from paragraph (2)(C) of this subsection to determine the projected annual payment amount for each hospital in that category.]

[(i) The projected annual payment amount may not exceed a hospital's interim hospital-specific limit.]

[(ii) Any amount above a hospital's interim hospital-specific limit will be redistributed to other hospitals as described in paragraph (7) of this subsection.]

[(6) Reconciliation of 2012 DSH payments. For DSH program year 2012, HHSC will reduce the projected annual payment amount determined in paragraphs (4)(C)(v) and (5)(C) of this subsection by the amount of all DSH payments already received by the hospital for the program year to determine a remaining interim payment amount. If the amount of the DSH payments already received equals or exceeds the projected annual payment amount:]

[(A) the hospital will not receive additional DSH funds for the program year;]

[(B) remaining interim DSH payments to remaining hospitals in that category will be reduced as follows. HHSC will:]

[(i) sum the remaining interim payment amounts for all such hospitals;]

[(ii) divide each such hospital's remaining interim payment amount by the result of clause (i) of this subparagraph;]

[(iii) for each hospital described in subparagraph (A) of this paragraph, subtract the hospital's projected annual payment amount as determined in paragraph (4)(C)(v) or (5)(C) of this subsection as appropriate from the amounts already paid to the hospital. Sum the results of this calculation for all hospitals described in subparagraph (A) of this paragraph;]

[(iv) multiply the result of clause (ii) of this subparagraph for each hospital by the result of clause (iii) of this subparagraph;]

[(v) subtract the result of clause (iv) of this subparagraph from the hospital's remaining interim payment amount to derive a payment amount.]

(5) [(7)] Redistribution of amounts in excess of hospital-specific limits. In the event that the projected annual payment amount calculated in paragraph (4) [paragraphs (4)(C) and (5)(C)] of this subsection exceeds a hospital's interim hospital-specific limit, the payment amount will be reduced to the interim hospital-specific limit. For each category of hospital described in paragraph (2) of this subsection, HHSC will separately sum all resulting excess funds and redistribute that amount to qualifying hospitals in that category that have projected payments below their interim hospital-specific limits. For each such hospital, HHSC will:

(A) subtract the hospital's projected DSH payment from its interim hospital-specific limit;

(B) sum the results of subparagraph (A) of this paragraph for all hospitals in the same category; and

(C) compare the sum from subparagraph (B) of this paragraph to the total excess funds calculated for the category of hospital.

(i) If the sum of subparagraph (B) of this paragraph is less than or equal to the total excess funds, HHSC will pay all such hospitals up to their interim hospital-specific limit and any remaining excess funds will be allocated to the other categories of hospitals described in this subsection.

(ii) If the sum of subparagraph (B) of this paragraph is greater than the total excess funds, HHSC will calculate payments to all such hospitals as follows:

(I) Divide the result of subparagraph (A) of this paragraph for each hospital by the sum from subparagraph (B) of this paragraph.

(II) Multiply the ratio from subclause (I) of this clause by the sum of the excess funds from all hospitals in the same category.

(III) Add the result of subclause (II) of this clause to the projected DSH payment for that hospital to calculate a revised projected annual payment amount.

(6) Additional allocation of DSH funds for rural public and rural public-financed hospitals. Rural public hospitals or rural public-financed hospitals from either hospital category in paragraph (2) of this subsection may be eligible for DSH funds in addition to the projected annual payment amounts calculated in paragraphs (4) and (5) of this subsection.

(A) For each rural public hospital or rural public financed hospital, determine the projected annual payment amount calculated in accordance with either paragraph (4) or (5) of this subsection, as appropriate.

(B) Subtract each hospital's projected annual payment amount from subparagraph (A) of this paragraph from each hospital's interim hospital-specific limit to determine the maximum additional DSH allocation.

(C) The governmental entity that owns the hospital or leases the hospital may provide the non-federal share of funding through an intergovernmental transfer to fund up to the maximum additional DSH allocation calculated in subparagraph (B) of this paragraph.

(7) [(8)] Reallocating funds if hospital closes, loses its license or eligibility. If a hospital that is receiving DSH funds closes, loses its license, or loses its Medicare or Medicaid eligibility during a DSH program year, HHSC will reallocate that hospital's disproportionate share funds going forward among all DSH hospitals in the same category that are eligible for additional payments.

(8) HHSC will give notice of the amounts determined in this subsection.

(9) The sum of the annual payment amounts for state owned and non-state owned IMDs are summed and compared to the federal IMD limit. If the sum of the annual payment amounts exceeds the federal IMD limit, the non-state owned IMDs are reduced on a pro-rata basis so that the sum is equal to the federal IMD limit. If the sum of the annual payment amounts still exceeds the federal IMD limit, the state owned IMDs are reduced on a pro rata basis so that the sum is equal to the federal IMD limit.

(10) If additional sources of public funding are identified by HHSC to be used as the non-federal share of funding for the DSH

program, the funds and distribution of DSH payments will be made as determined by HHSC.

(i) Hospital located in a federal natural disaster area. A hospital that is located in a county that is declared a federal natural disaster area and that was participating in the DSH program at the time of the natural disaster may request that HHSC determine its DSH qualification and interim reimbursement payment amount under this subsection for subsequent DSH program years. The following conditions and procedures will apply to all such requests received by HHSC:

(1) The hospital must submit its request in writing to HHSC with its annual DSH application.

(2) If HHSC approves the request, HHSC will determine the hospital's DSH qualification using the hospital's data from the DSH data year prior to the natural disaster. However, HHSC will calculate the one percent Medicaid minimum utilization rate, the interim hospital-specific limit, and the payment amount using data from the DSH data year. The final hospital-specific limit will be computed based on the actual data for the DSH program year.

(3) HHSC will notify the hospital of the qualification and interim reimbursement.

(j) Review of HHSC determination of eligibility or[,] qualification[, ~~and estimated payment amount~~].

(1) Prior to the first payment of the DSH program year, HHSC will notify each hospital that applied to participate in the DSH program whether it is eligible and qualified to participate. [~~An eligible hospital will be notified of its estimated annual DSH allocation, calculated as described in subsections (g)(1)(2) and (h)(2) - (6) of this section.~~]

(2) A hospital that either does not qualify or is ineligible [~~disputes the payment amount~~] may request a review by HHSC in accordance with paragraph (3) of this subsection. Initial qualification and eligibility determinations [~~and estimated payment amounts for all hospitals~~] may change depending on the outcome of the review.

(3) Except as specified in paragraph (6) of this subsection, a request for review must be submitted in writing to HHSC within 30 [~~15~~] calendar days of the date the hospital received the notification under this subsection.

(A) The written request for review and all supporting documentation must be sent to HHSC's Director of Hospital Rate Analysis [~~Reimbursement~~], Rate Analysis Department.

(B) The request must allege the specific factual or calculation errors the hospital contends HHSC made that, if corrected, would result in the hospital's qualification or eligibility [~~qualifying~~] for payments [~~or receiving a more accurate payment amount~~].

(C) A hospital may not base a request for review on a claim that the data the hospital or a Medicaid contractor submitted to HHSC is incorrect or incomplete data unless such incorrect or incomplete data would result in an inappropriate qualification or eligibility [~~or payment to the hospital~~].

(i) The hospital will have an opportunity to resolve disputed data with the Medicaid contractor under subsection (h)(1) of this section.

(ii) HHSC may require supporting documentation when a hospital requests a review based on data submitted with and certified in a hospital's original DSH application.

(iii) HHSC may require an independent third party audit of the revised data to be paid for by the hospital requesting the review. The audit must be performed within the time frame determined by HHSC.

(D) The request for review may not dispute HHSC's eligibility, qualification, or payment methodologies or the data submitted by the Medicaid contractors. The review and adjudication of claims is conducted between the hospital and the Medicaid contractors, prior to the time frames identified in subsection (h)(1) of this section.

[~~(E) Within 30 calendar days of the date of the notification, the hospital must submit documentation supporting its allegations.~~]

(4) The review is:

(A) limited to the hospital's allegations of factual or calculation errors;

(B) supported by documentation submitted by the hospital or used by HHSC in making its original determination;

(C) solely a data review; and

(D) not an adversarial hearing.

(5) HHSC will notify the hospital of the results of the review.

(6) HHSC will not consider requests for review submitted after the deadline specified in paragraph (3) of this subsection unless HHSC subsequently notifies a hospital that it no longer qualifies for DSH funding. In that case, the hospital may request a review in accordance with paragraph (3) of this subsection.

(k) Disproportionate share funds held in reserve.

(1) If HHSC has reason to believe that a hospital is not in compliance with the conditions of participation listed in subsection (e) of this section, HHSC will notify the hospital of possible noncompliance. Upon receipt of such notice, the hospital will have 30 calendar days to demonstrate compliance.

(2) If the hospital demonstrates compliance within 30 calendar days, HHSC will not hold the hospital's DSH payments in reserve.

(3) If the hospital fails to demonstrate compliance within 30 calendar days, HHSC will notify the hospital that HHSC is holding the hospital's DSH payments in reserve. HHSC will release the funds corresponding to any period for which a hospital subsequently demonstrates that it was in compliance. HHSC will not make DSH payments for any period in which the hospital is out of compliance with the conditions of participation listed in subsection (e)(1) and (2) of this section. HHSC may choose not to make DSH payments for any period in which the hospital is out of compliance with the conditions of participation listed in subsection (e)(3) - (7) of this section.

(4) If a hospital's DSH payments are being held in reserve on the date of the last payment in the DSH program year, and no request for review is pending under paragraph (5) of this subsection, the amount of the payments is not restored to the hospital, but is divided proportionately among the hospitals receiving a last payment.

(5) Hospitals that have DSH payments held in reserve may request a review by HHSC.

(A) The hospital's written request for a review must:

(i) be sent to HHSC's Director of Hospital Rate Analysis [~~Reimbursement~~], Rate Analysis Department;

(ii) be received by HHSC within 15 calendar days after notification that the hospital's DSH payments are held in reserve; and

(iii) contain specific documentation supporting its contention that it is in compliance with the conditions of participation.

(B) The review is:

(i) limited to allegations of noncompliance with conditions of participation;

(ii) limited to a review of documentation submitted by the hospital or used by HHSC in making its original determination; and

(iii) not conducted as an adversarial hearing.

(C) HHSC will conduct the review and notify the hospital requesting the review of the results.

(l) Recovery of DSH funds. Notwithstanding any other provision of this section, HHSC will recoup any overpayment of DSH funds made to a hospital, including an overpayment that results from HHSC error or that is identified in an audit.

(1) If the overpayment occurred prior to September 19, 2012 [~~the effective date of this section~~], recovered funds will be redistributed proportionately to all DSH hospitals that are eligible for additional payments for the program year in which the overpayment occurred.

(2) If the overpayment occurred on or after September 19, 2012 [~~the effective date of this section~~], recovered funds will be redistributed proportionately to DSH hospitals that were in the same category in the program year in which the overpayment occurred and that are eligible for additional payments for that [~~the~~] program year [~~in which the overpayment occurred~~]. If there are no hospitals in the same category eligible for additional payments for that program year, any remaining funds will be distributed proportionately among all hospitals eligible for additional payments.

(3) If the overpayment was made to a rural public hospital or rural public-financed hospital, and if the overpayment occurred during a period when that hospital received an additional DSH allocation pursuant to subsection (h)(6) of this section, HHSC will recover the amount of the overpayment and redistribute or return the funds as follows:

(A) Recovered funds up to the amount supported by transfers of non-federal funds from the sources described in subsection (h)(2) of this section will be redistributed as described in paragraphs (1) and (2) of this subsection.

(B) Recovered funds in excess of the amount described in subparagraph (A) of this paragraph will not be redistributed. Instead, HHSC will return the non-federal share to the governmental entity that owns or leases the hospital and will return the federal share to CMS.

(m) Failure to provide supporting documentation. HHSC will exclude data from DSH calculations under this section if a hospital fails to maintain and provide adequate documentation to support that data.

(n) Voluntary withdrawal from the DSH program.

(1) HHSC will recoup all DSH payments made during the same DSH program year to a hospital that voluntarily terminates its participation in the DSH program. HHSC will redistribute the recouped funds according to the distribution methodology described in subsection (l) of this section.

(2) A hospital that voluntarily terminates from the DSH program will be ineligible to receive payments for the next DSH program year after the hospital's termination.

(3) If a hospital does not apply for DSH funding in the DSH program year following a DSH program year in which it received DSH funding, even though it would have qualified for DSH funding in that year, the hospital will be ineligible to receive payments for the next DSH program year after the year in which it did not apply.

(4) The hospital may reapply to receive DSH payments in the second DSH program year after the year in which it did not apply.

(o) Audit process.

(1) Independent certified audit. HHSC is required by the Social Security Act (Act) to annually complete an independent certified audit of each hospital participating in the DSH program in Texas. Audits will comply with all applicable federal law and directives, including the Act, the Omnibus Budget and Reconciliation Act of 1993 (OBRA '93), the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), pertinent federal rules, and any amendments to such provisions.

(A) Each audit report will contain the verifications set forth in 42 CFR §455.304(d).

(B) The sources of data utilized by HHSC, the hospitals, and the independent auditors to complete the DSH audit and report include:

(i) The Medicaid cost report;

(ii) Medicaid Management Information System data; and

(iii) Hospital financial statements and other auditable hospital accounting records.

(C) A hospital must provide HHSC or the independent auditor with the necessary information in the time specified by HHSC or the independent auditor. A [~~complete, detailed~~] listing of all information required by the independent auditor is available on HHSC's website.

(D) A hospital that fails to provide requested information or to otherwise comply with the independent certified audit requirements may be subject to a withholding of Medicaid disproportionate share payments or other appropriate sanctions.

(E) HHSC will recoup any overpayment of DSH funds made to a hospital that is identified in the independent certified audit and will redistribute the recouped funds to DSH providers that are eligible for additional payments subject to their final hospital-specific limits, as described in subsection (l) of this section.

(F) Review of preliminary audit finding of overpayment.

(i) Before finalizing the audit, HHSC will notify each hospital that has a preliminary audit finding of overpayment.

(ii) A hospital that disputes the finding or the amount of the overpayment may request a review in accordance with the following procedures.

(I) A request for review must be received by HHSC's Director of Hospital Rate Analysis [~~Reimbursement~~], Rate Analysis Department, in writing by regular mail, hand delivery or special mail delivery, from the hospital within 30 calendar days of the date the hospital receives the notification described in clause (i) of this subparagraph.

(II) The request must allege the specific factual or calculation errors the hospital contends the auditors made that, if corrected, would change the preliminary audit finding.

(III) All documentation supporting the request for review must accompany the written request for review or the request will be denied.

(IV) The request for review may not dispute the federal audit requirements or the audit methodologies.

(iii) The review is:

(I) limited to the hospital's allegations of factual or calculation errors;

(II) solely a data review based on documentation submitted by the hospital with its request for review or that was used by the auditors in making the preliminary finding; and

(III) not an adversarial hearing.

(iv) HHSC will submit to the auditors all requests for review that meet the procedural requirements described in clause (ii) of this subparagraph.

(I) If the auditors agree that a factual or calculation error occurred and change the preliminary audit finding, HHSC will notify the hospital of the revised finding.

(II) If the auditors do not agree that a factual or calculation error occurred and do not change the preliminary audit finding, HHSC will notify the hospital that the preliminary finding stands and will initiate recoupment proceedings as described in this section.

(2) Additional audits. HHSC may conduct or require additional audits.

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 February 15, 2013.

TRD-201300646
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 424-6900

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TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission or OCCC) proposes amendments to 7 TAC §89.207, concerning Files and Records Required, and §89.401, concerning Branch Networks, relating to subsequent transfers of property tax loans.

During recent legislative hearings, stakeholders expressed concerns about unlicensed activity by subsequent holders of property tax loans. The OCCC believes that the statute's applicability to subsequent holders is clear, as Texas Finance Code, §351.051(a) states that a license is required to "contract for, charge, or receive, *directly or indirectly,* in connection with a property tax loan subject to this chapter, a charge, including interest, compensation, consideration, or another expense...."

The OCCC has issued a bulletin to assist in the clarification of this issue (available at: http://www.occc.state.tx.us/). The bulletin states that a company must hold a property tax lender license with the OCCC in order for a property tax loan to be transferred, assigned, or sold to the company. A license is also required to accept any charges in connection with a property tax loan or to collect on the loan.

To provide further guidance to stakeholders, the OCCC has developed these rule amendments related to recordkeeping and branch locations. The agency circulated an early draft of the proposed changes to interested stakeholders and has incorporated several changes suggested by stakeholders.

The purpose of the proposed amendments to §89.207, Files and Records Required, is to ensure that the proper transfer, assignment, and sale documentation is maintained so that the agency can verify through the examination process that property tax loans are transferred, assigned, or sold to authorized parties under Texas Finance Code, §351.051.

Specifically, the proposed amendments add paragraph (5) to §89.207, requiring the retention of records regarding the transfer, assignment, or sale of property tax loans. A register must also be maintained including: the name of the borrower, the loan number, the date of the transaction, and the name, address, and license or exemption information of the party to which the accounts are assigned, transferred, or sold. A companion amendment is proposed with the addition of paragraph (2)(L) to reflect that these records must also be kept in each individual borrower's property tax loan transaction file. In addition, the remaining paragraphs of §89.207 have been renumbered accordingly.

The proposed amendments to §89.401, Branch Networks, add the verbs "transact," "service," and "hold," to better track the statute and more accurately reflect all of the actions that require a license. Additionally, the proposed changes to §89.401 include technical corrections providing parallel terms and phrases to those used during the rule review of this chapter completed last year.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the changes to these rules will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and the rules will be more easily enforced.

Licensees that do not transfer, assign, or sell their property tax loans will not experience any fiscal implications as a result of these amendments. For licensees who elect to transfer, assign, or sell their property tax loans to other parties, there will be some anticipated costs to comply with the amendments as proposed. The anticipated costs for these licensees would include the initial expense of setting up the register or log of transfer, assignment, or sale transactions; updating the register as needed; as well as the maintenance of these documents in each individual bor-

rower's account record. The register could easily be maintained either in paper form or in an Excel spreadsheet, Word table, or similar electronic document.

Continuing with the discussion of licensees that decide to transfer, assign, or sell their property tax loans, the agency estimates that the initial time allocation to comply with the amendments would be 15 minutes of employee time to create or establish the register or log. However, the cost per transaction should decrease quickly and dramatically, as the agency anticipates that this simple process should become routine in a short amount of time (e.g., 5 minutes or less per transaction soon after initial set up). The actual anticipated cost would vary depending on the salary of the employee performing these recordkeeping duties. Additionally, in order to maintain the required records in each individual borrower's account record, there is an anticipated cost of $0.10 per transaction to copy the transfer, assignment, or sale document. From the agency's experience, these documents are usually one page per transaction.

Thus, aside from the anticipated costs for licensees who elect to transfer, assign, or sell their property tax loans outlined in the preceding paragraphs, there will be no other effects on individuals required to comply with the amendments as proposed.

The agency is not aware of any adverse economic effect on small or micro-businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these amendments, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of the 31st day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

SUBCHAPTER B. AUTHORIZED ACTIVITIES

7 TAC §89.207

These amendments are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007, grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.207. Files and Records Required.

Each licensee must maintain records with respect to each property tax loan made under Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065, and make those records available for examination under Texas Finance Code, §351.008. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) (No change.)

(2) Record of individual borrower's account. A separate record must be maintained for the account of each borrower and the record must contain at least the following information on each loan:

(A) - (J) (No change.)

(K) Collection contact history, including a written or electronic record of each contact made by a licensee with the borrower or any other person and each contact made by the borrower with the licensee, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact; [.]

(L) Transfer, assignment, or sale records.

(3) - (4) (No change.)

(5) Transfer, assignment, or sale records and register.

(A) A licensee must maintain transfer, assignment, or sale records, whether paper or electronic, when any Texas Finance Code, Chapter 351 property tax loan made by or acquired by the licensee is transferred to another individual or entity.

(B) Copies of any transfers, assignments, or sales of liens must be maintained in each individual borrower's property tax loan transaction file.

(C) A licensee must also maintain a transfer, assignment, or sale records register for any property tax loan transferred, assigned, or sold by the licensee to another party. The transfer, assignment, or sale register must show the name of the borrower, the loan number assigned in the loan register, the date of the transfer or assignment, and the name, address, and license number or exemption certificate number of the party to which the accounts are transferred, assigned, or sold.

(6) [~~(5)~~] Record of loans in litigation and foreclosure.

(A) An index of each foreclosure as it occurs and each legal action by or against the licensee as it is initiated must be recorded. The index must show the borrower's name, account number, and date of action.

(B) All loan records, correspondence, and any other information pertinent to the litigation or foreclosure must be maintained in the borrower's account folders or files.

(7) [~~(6)~~] Disaster recovery plan. A licensee must maintain a sufficient disaster recovery plan to ensure that property tax loan transaction information is not destroyed, lost, or damaged.

(8) [~~(7)~~] Retention and availability of records. All books and records required by this section [~~subsection~~] must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. The records required by this section [~~subsection~~] must be available or accessible at an office in the state designated by the licensee except when the property tax loan transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for

additional examination costs associated with examinations conducted out of state.

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

Filed with the Office of the Secretary of State on February 15, 2013.

TRD-201300659
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 936-7621

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SUBCHAPTER D. LICENSE

7 TAC §89.401

These amendments are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007, grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.401. Branch Networks.

For purposes of Texas Finance Code, §351.151(b) [~~(Acts 2007, 80th Leg., ch. 1220)~~], an authorized licensee [~~lender~~] with multiple licensed offices is authorized to transact, make, negotiate, arrange, service, hold, and collect loans from any of its licensed locations. Any action relating to a single account may occur at different licensed locations as long as every action is made by a licensed branch operated by the same licensee [~~licensed lender~~].

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 February 15, 2013.

TRD-201300660
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 936-7621

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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 97. COMMISSION POLICIES AND ADMINISTRATIVE RULES

SUBCHAPTER C. DEPARTMENT OPERATIONS

7 TAC §97.207

The Credit Union Commission (the Commission) proposes amendments to §97.207, concerning Contracts for Professional or Personal Services. The amendments add a provision for mediating disputes arising from professional or personal service contracts with the Department. The proposal incorporates the dispute resolution process adopted by the Office of the Attorney General.

The amendments are proposed to comply with Government Code, Chapter 2260.

Stacey McLarty, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. McLarty has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Stacey McLarty, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Government Code, Chapter 2260, concerning Resolution of Contract Claims Against the State.

The specific sections affected by the proposed amendments are Texas Government Code, Chapter 2260.

§97.207. Contracts for Professional or Personal Service.

(a) In connection with the authority granted to the commissioner to negotiate, contract or enter into an agreement for professional or personal services under §15.414, Texas Finance Code, the Department hereby incorporates by reference the procurement rules of the Comptroller of Public Accounts, 34 TAC Chapter 20 (relating to Texas Procurement and Support Services), or any successor rules, regarding soliciting and awarding contracts. The Department shall comply, to the extent applicable, with the requirements of these rules when contracting for professional or personal services that are paid for with State appropriated money or paid by credit unions pursuant to [~~7 TAC~~] §97.113(l) of this title (relating to Fees and Charges).

(b) Any professional or personal service contracts between the Department and entities that receive funds from the State of Texas shall contain the following language regarding the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds: "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 requirements to cooperate is included in any subcontract it awards."

(c) Any professional or personal service contracts between the Department and entities that receive funds from the State of Texas shall contain the following language regarding dispute resolution: "The parties shall attempt to resolve any dispute arising under this contract by using the Department's dispute resolution process." The Department hereby incorporates by reference as its dispute resolution process the rules found in 1 TAC Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes), or any successor rules.

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 February 15, 2013.

TRD-201300653
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 837-9236

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 25. OFFICE OF THE STATE ARCHEOLOGIST

13 TAC §§25.1 - 25.7

(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 Historical Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Historical Commission (THC) proposes the repeal of Chapter 25, §§25.1 - 25.7, concerning the Office of the State Archeologist. New §§25.1 - 25.8 will replace the repealed sections, and they are contemporaneously proposed in this issue of the *Texas Register.*

The repeal is proposed to eliminate outdated terminology and procedures and will be replaced with new sections to implement necessary updates, additions and changes to more precisely reflect the programs and procedures of the THC's State Archeological Program, formerly known as the Office of the State Archeologist.

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

Mr. Wolfe 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 the repeal and replacement of the existing rules will be an increased efficiency and effectiveness in the implementation of the Texas Government Code (Title 4, Subtitle D, Chapter 442). Additionally, Mr. Wolfe has determined that there will be no effect on small or micro businesses; and there are no anticipated economic costs to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

The repeal is proposed under §442.007(q) of the Texas Government Code, which provides the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

The repeal implements §442.007 of the Texas Government Code. No other statutes, articles, or codes are affected by the proposal.

§25.1. Definitions.

§25.2. Determinations of Significance.

§25.3. Site Investigations.

§25.4. Consultation.

§25.5. Inventory of Archeological Sites.

§25.6. Collections.

§25.7. Protection of Sites.

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 February 12, 2013.

TRD-201300598
Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 463-1858

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CHAPTER 25. STATE ARCHEOLOGICAL PROGRAM

13 TAC §§25.1 - 25.8

The Texas Historical Commission (THC) proposes new Chapter 25, §§25.1 - 25.8, concerning the State Archeological Program. New §§25.1 - 25.8 will replace the existing §§25.1 - 25.7 that are contemporaneously proposed for repeal in this issue of the *Texas Register.*

The new §§25.1 - 25.8 eliminate outdated terminology and procedures and provide necessary updates, additions and streamlining to more precisely reflect the programs and procedures of the THC's State Archeological Program, formerly known as the Office of the State Archeologist. Additionally, the chapter title has been changed from "Office of the State Archeologist" to "State Archeological Program".

Section 25.1 eliminates outdated terminology and includes both updated and new definitions.

Section 25.2 clarifies procedures for making determinations of significance. It includes the use of the term State Antiquities Landmark instead of Registered Historic Landmark to more accurately refer to the designation that applies to both buildings and archeological sites. The term state archeologist replaces the outdated reference to the former Office of the State Archeologist.

In §25.3 and §25.4, the term state archeologist replaces the outdated reference to the former Office of the State Archeologist. The sections have also been streamlined by eliminating duplication and referring to other relevant sections of this rule.

Section 25.5, concerning Inventory of Archeological Sites, includes new text that reflects technological advances instituted by the THC with regard to site inventory procedures.

Section 25.6 refers to curatorial facility/facilities rather than the outdated terms of permanent repository/repositories. This section also contains expanded details concerning appraisals of collections or artifacts.

Section 25.7, concerning Protection of Archeological Sites, includes conservation easements and acquisition of real property as protective measures. Fiscal implications are now among the listed factors influencing the selection of sites for proposed donations and purchases. This section also clarifies that the acquisition of property through donation or purchase to a THC historic site is governed by the requirements set out in 13 TAC Chapter 16.

Section 25.8 outlines the procedures involved in the pursuit of investigations at protected archeological sites.

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

Mr. Wolfe has also determined that for each year of the first five-year period the new sections are in effect the public benefit anticipated as a result of the new sections will be an increased efficiency and effectiveness in the implementation of the Texas Government Code (Title 4, Subtitle D, Chapter 442). Additionally, Mr. Wolfe has determined that there will be no effect on small businesses; and there are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

The new sections are proposed under §442.005(r) and (q); and §442.007(c) and (e) of the Texas Government Code and Texas Natural Resources Code §191.052, which provides the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

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

§25.1. Definitions.

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

(1) Antiquities--The tangible artifacts and objects of the past that relate to human life and culture.

(2) Archeological investigation--Any research activity applied to archeological sites and the material remains in or removed from such sites, including survey, excavation, documentation, conservation, mapping, and analysis.

(3) Archeological preservation--The protection and conservation of the archeological and heritage of Texas.

(4) Archeological site--Any land or marine-based place that contains material remains of past human life or activities in their original or historical context that are at least 50 years of age or a place that has been determined by the commission to be of transcendent historical or cultural significance.

(5) Archeology division--A division of the commission that includes the office of the State Archeologist.

(6) Artifact--A tangible object that relates to human life and culture of the past. Examples include, but are not limited to items constructed, altered, created, or used by humans. Paleontological remains and geological specimens are not included unless occurring in or related to an archeological context.

(7) Avocational archeologist--Any individual with demonstrated training, skill and/or experience in archeological investigation who is not a professional archeologist.

(8) Conservation easement--A nonpossessory interest in real property that imposes limitations or affirmative obligations on the person holding the possessory or fee interest, as defined and authorized in Texas Natural Resources Code Chapter 183.

(9) Curatorial facility--A museum or repository that holds and maintains archeological collections.

(10) Historic preservation--The protection and conservation of the archeological and historical heritage of Texas.

(11) Historic resource--Any site, complex, building or structural remains of historical or archeological interest and its contents. Examples include, but are not limited to, prehistoric habitation sites, mounds, open campsites and rock shelters; mines, quarry areas and lithic procurement areas; game procurement and processing sites; petroglyph and pictograph sites; historic shipwrecks; remnants of historic buildings and structures; cemeteries; dumps and trash heaps; and military sites. Only resources at least 50 years old, or which have been determined by the state archeologist to be of transcendent historic importance, are considered historical resources within the meaning of this chapter.

(12) History (historic, historical)--The recording and study of past cultures, events, or resources created in the past and includes prehistory, relating to events occurring prior to written history.

(13) Inventory of sites--Any form of tabulating, collecting, and holding archeological site records, and all activities which maintain that inventory, including restricted data contained within the Texas Historic Sites Atlas electronic database.

(14) Professional archeologist--An archeologist certified by the Register of Professional Archeologists (RPA) for the level of required investigation; anyone determined a professional archeologist by the state archeologist, according to the criteria of the RPA; or anyone meeting required qualifications and standards detailed in pertinent state rules (§26.4 of this title) or federal requirements specified in the Secretary of Interior's Professional Qualifications Standards (36 CFR Part 61, Appendix A) for archeological investigations.

(15) Site records--All data and information relating to the character, condition, and location of any archeological site or other historic resource and all data and information pertinent to collections of material remains. Site records include, but are not limited to, artifact catalogues, photographs, digital imagery, maps, spatial imagery, notes,

drawings, site data forms, TexSite electronic forms, documents, audio data, and electronic data.

(16) State archeologist--The position authorized by Texas Government Code §442.007, responsible for the administration of the state archeological program.

(17) Steward--A current member of the Texas Archeological Stewardship Network.

(18) Texas Archeological Stewardship Network or TASN--A volunteer program administered by the commission. The TASN is composed of volunteer avocational archeologists selected for their demonstrated skills, experience and abilities to assist the commission with archeological investigations, research, preservation efforts, training, and public outreach endeavors.

(19) TexSite form--The standardized electronic form for recording archeological site information as developed by the commission and Texas Archeological Research Laboratory of The University of Texas.

§25.2. Determination of Significance.

A determination of significance is used by the Archeology Division to help decide which archeological sites are most worthy of recording, investigation, preservation, and other treatment. Considered in a determination of significance are the following:

(1) listing in the National Register of Historic Places;

(2) designation as a state antiquities landmark;

(3) qualification, as determined by the commission, as an eligible property under the criteria for inclusion in the National Register of Historic Places or for designation as a state antiquities landmark;

(4) marking by an official Texas historical marker of any type, including centennial markers;

(5) determination by the state archeologist or the commission that the site or resource is capable of yielding information important to the understanding of history; and

(6) an age of at least 50 years, unless younger and determined by the state archeologist or the commission to be of transcendent historical or cultural importance.

§25.3. Site Investigations.

(a) Decisions. The choice to investigate a site or other historic resource is made by the state archeologist in consideration of the following:

(1) the nature and immediacy of any threat to the site or resource; and

(2) the site's significance as defined in §25.2 of this title (relating to Determination of Significance).

(3) These decisions pertain to archeological sites on land. Decisions to investigate submerged sites such as historic shipwrecks will be governed by Chapter 28 of this title (relating to Historic Shipwrecks).

(b) Appointment of avocational assistant. The state archeologist may appoint avocational archeologists, such as stewards, to investigate or inventory historic resources threatened by immediate harm or to aid in mitigating the effect of damage. The appointed avocational archeologist(s) will work under the direction of the state archeologist. Such appointments do not supersede requirements specified in the Antiquities Code of Texas (Texas Natural Resources Code Chapter 191) or associated rules (Chapter 26 of this title) or any pertinent federal statutes and regulations.

§25.4. Consultation.

(a) Any individual, institution, organization, agency, or corporation may direct inquiries to the state archeologist and request consultation relating to prehistoric and historic archeology and related matters. All inquiries will be answered or referred to another appropriate agency or organization.

(b) Consultations involving archeological investigation are carried on in accordance with the criteria of §25.3 of this title (relating to Site Investigations) and any pertinent state or federal statutes, rules and regulations.

§25.5. Inventory of Archeological Sites.

(a) A continuing inventory of nonrenewable archeological resources is maintained and includes data pertinent to archeological sites in Texas. Information from other sources is included.

(b) Request for access. Any person who desires access to the statewide inventory shall make their request in accordance with the rules set forth in Chapter 24 of this title (relating to Restricted Cultural Resource Information).

(c) Withholding information. Any specific information in the inventory of sites may be withheld from publication or from the public if the state archeologist deems that disclosure would be likely to result in harm to the resources. Information that may be withheld includes, but is not limited to, site records, locational information, notes, photographs, maps, spatial imagery, reports, and electronic data, including Restricted Cultural Resource Information contained within the Texas Historic Sites Atlas, as defined in §24.7 of this title (relating to Definitions).

(d) Conditions. Determinations to withhold information will be made by the state archeologist on the facts of each request for information and are based on the following conditions:

(1) ownership of the resource, where disclosure of information may lead to infringement of the legal rights of private landowners;

(2) significance of the resource, in that significance reflects the magnitude of potential loss caused by damage to the resource;

(3) quality and amount of evaluative data available for the resource, in that insufficient data can impede an accurate determination of the character and significance of the resource;

(4) location of the resource in relation to other nearby and/or related resources, in that withholding of site location and/or data may help protect other resources;

(5) existing protective measures in place at the resource, such as state antiquities landmark designation, conservation easement, and/or maintenance as a historic site, park or other facility with on-site supervisory personnel; and

(6) previous and widespread general knowledge of the location and character of a resource, in that information relating to well-known landmarks, historic sites, and/or other public resources will not arbitrarily be withheld.

§25.6. Collections.

(a) Maintenance. The commission will do the following:

(1) maintain collections recovered by the archeology division for the period of time required for their processing, analysis, and adequate reporting;

(2) maintain collections on loan to the archeology division for the period of time required for their processing, analysis, and ad-

equate reporting and return or place such collections according to the terms of the loan agreement entered into with the collection owner;

(3) maintain on a temporary basis, collections recovered by other organizations or individuals from archeological sites in Texas that the archeology division agrees to accept for placement in an appropriate curatorial facility;

(4) refer to curatorial facilities all other requests from individuals, institutions, organizations, and agencies for collections placement; and

(5) maintain on a permanent basis only those collections falling within its responsibilities, for which no permanent repository can be found, and/or for comparative analysis.

(b) Curatorial facilities. In seeking curatorial facilities for collections held in temporary custody, the archeology division will observe the following procedures.

(1) All collections transferred by this office to a curatorial facility will include copies of all pertinent site records.

(2) Curatorial facilities will be identified by this office according to the criteria of existing state and federal standards for curation.

(3) For state held-in-trust collections, placement will be in accordance with the requirements specified in Chapter 29 of this title (relating to Management and Care of Artifacts and Collections).

(4) For collections that do not meet the state held-in-trust criteria, preference will be given in accordance with the following criteria:

(A) curatorial facilities that are in the region from which the collections were recovered;

(B) curatorial facilities that maintain procedures for access to collections and site records that prevent disclosure of information harmful to the resources involved;

(C) curatorial facilities that facilitate scientific, archeological research;

(D) curatorial facilities that observe state and/or federal standards for curation; and

(E) repositories in the State of Texas.

(5) Transfer of collections to curatorial facilities will be made under the terms of a written agreement between the facility and the commission. The agreement will include an inventory of transferred items, and its terms will be guided by the pertinent state or federal standards for curation. The agreement will provide that, should a repository fail to maintain the integrity of collections provided by the commission, or to protect them adequately, the repository will notify the commission so that other arrangements can be made for the collections.

(6) Pertinent data concerning collections, related site records, and the sites of resources from which the collections were made may be retained in the commission's inventory of archeological resources, and no transfer agreement will be made that prohibits the commission from retaining data and information.

(c) Human skeletal remains.

(1) This office will not publicly exhibit human skeletal remains recovered from archeological sites, and it will discourage the public exhibition of human skeletal remains recovered from archeological sites by others.

(2) Human skeletal remains and associated artifacts will be handled in a manner that complies with applicable state and federal laws and regulations.

(d) Artifact identification. This office will not assist in the identification of unprovenienced artifacts.

(e) Appraisals. This office will not appraise collections or artifacts for private citizens, corporations, or organizations or retain an appraiser for or refer an appraiser to the private citizen, corporation or organization. THC personnel may evaluate state-associated collections for in-house purposes. Donors requiring appraisals for income tax purposes must obtain an appraisal at their own expense from an appraiser of their choice prior to donation. In-house evaluation of state-associated collections or artifacts retained at the commission's facilities for insurance purposes, traveling exhibits or activities within the professional community are professional assessments and not appraisals. In-house evaluations are the responsibility of the agency.

§25.7. Protection of Archeological Sites.

(a) Purpose. The purpose of this section is to preserve archeological sites through the implementation of preservation designations, conservation easements, or through the acquisition of real property by donation or purchase.

(b) Assessment and selection. Selection of sites for protection is made by the Archeology Division on the basis of an assessment of site significance and integrity as stated in §25.2 of this title (relating to Determination of Significance). Priority is given to significant sites that are threatened with damage or destruction. Assessment and selection of sites for protection may be made in cooperation with individuals, institutions, non-profit organizations, corporations, and/or state or federal agencies.

(c) Factors influencing selections include the following:

(1) potential to contribute to a better understanding of Texas history;

(2) importance of the site within the context of a regional culture area; and

(3) public education and interpretation potential of the site(s).

(d) For proposed donations and purchases, assessments and recommendations may also take fiscal implications and other pertinent information into account.

(e) Protection procedures. The following procedures will be followed:

(1) All protective measures for sites on privately owned land will be undertaken only with the full and voluntary cooperation of the owner(s).

(2) The owner(s) will be informed of the archeological significance of the sites located on their property and of the various options available to ensure long-term preservation.

(3) The alternatives for long-term preservation include, but are not limited to, the following:

(A) donation of the property to the state or to a suitable nonprofit organization;

(B) purchase of the property by the state or a suitable nonprofit organization;

(C) assignment of a conservation easement (Conservation Easement Act, Texas Natural Resources Code, Chapter 183) by owner(s) to the state or qualified nonprofit organization;

(D) designation of the property as a state antiquities landmark; and

(E) nomination of the property to the National Register of Historic Places.

(4) Where an archeological site or property containing one or more archeological sites is acquired for the state through donation or purchase by the commission, the following conditions shall apply.

(A) The donation will be unconditional and will reflect full ownership by the state.

(B) The donation may consist of surface rights only. Mineral rights in such instances will be retained by the landowner with the stipulation that all contained archeological deposits will be protected against any form of land-altering mineral exploration and development. In the case of donations that include mineral rights, such rights will be managed by the General Land Office of Texas.

(C) THC commissioners will consider proposals for donation or purchase and vote to either accept or decline the property acquisition.

(D) The property to be acquired will be limited to those areas containing archeological deposits; any immediately adjacent or contained natural features having direct relevance to human occupation of the site, such as springs, bedrock exposures, or flint outcrops; and to access corridors.

(E) The commission may provide for legal survey, legal description, and deed recording of the acquired property.

(F) The commission will supply documentation to the landowner or other entity as required to facilitate available benefits.

(5) These conditions do not apply to the acquisition of property through donation or purchase to a commission historic site, actions which are governed by the requirements set out in Chapter 16 of this title for commission historic sites.

(f) The commission will initiate measures, including the following, to provide for the long-term protection of archeological sites. Measures may include but are not limited to:

(1) appointment of a local professional archeologist, steward, or other avocational archeologist to examine the property at regular intervals and to report any acts of vandalism or other damaging activity;

(2) notification of local law-enforcement officials of the property's protected status to encourage enforcement of applicable laws; and

(3) placement of permanent signs or markers, if the placement of such signs or markers does not constitute a threat of harm to the resource.

§25.8. Investigations at Protected Archeological Sites.

(a) Investigations at protected sites will be subject to the requirements of applicable state and/or federal laws, rules and regulations and will be conducted under the direction of qualified professional archeologists.

(b) All proposals for archeological investigations at acquired sites will include a detailed scope of work that will be considered for approval by the archeology division.

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 February 12, 2013.

TRD-201300599
Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 463-1858

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CHAPTER 26. PRACTICE AND PROCEDURE

13 TAC §§26.1 - 26.22, 26.24, 26.25, 26.27

(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 Historical Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Historical Commission (THC) proposes the repeal of Chapter 26, §§26.1 - 26.22, 26.24, 26.25, and 26.27, concerning Practice and Procedure. New §§26.1 - 26.27 will replace the repealed sections, and they are contemporaneously proposed in this issue of the *Texas Register.*

The repeal is proposed as a means of updating and streamlining this chapter which has not been thoroughly revised since 1985.

Mark Wolfe, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of the repeal as proposed.

Mr. Wolfe 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 the repeal and replacement is an increased efficiency and effectiveness in the implementation of the Antiquities Code of Texas. Additionally, Mr. Wolfe has determined that there will be no effect on small businesses; and there are no anticipated economic costs to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

The repeal is proposed under §442.005(b) and (q) of the Texas Government Code, and §191.052 of the Texas Natural Resources Code which provides the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

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

§26.1. Object.
§26.2. Scope.
§26.3. Compliance with Rules.
§26.4. Amendment of Rules.
§26.5. Definitions.
§26.6. Antiquities Advisory Board.
§26.7. Criteria for Evaluating Historic Structures.
§26.8. Criteria for Evaluating Archeological Sites.
§26.9. Criteria for Evaluating Shipwrecks.

§26.10. Criteria for Evaluating Caches and Collections.

§26.11. Location and Discovery of Cultural Resources and Landmarks.

§26.12. Designation Procedures for State Archeological Landmarks.

§26.13. Designation of Private Property.

§26.14. Memorandum of Understanding with Texas Department of Transportation.

§26.15. Memorandum of Understanding Between Texas Historical Commission and Texas Water Development Board.

§26.16. Memoranda of Understanding with the Texas Parks and Wildlife Department.

§26.17. Issuance and Restrictions of Archeological Permits.

§26.18. Issuance and Restrictions of Historic Structure Permits.

§26.19. Permit Monitoring.

§26.20. Archeological Permit Categories.

§26.21. Application for Archeological Permits.

§26.22. Application for Historic Structure Permits.

§26.24. Reports Relating to Archeological Permits.

§26.25. Reports Relating to Historic Structure Permits.

§26.27. Principal Investigator's Responsibilities for Disposition of Archeological Artifacts and Data.

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

Filed with the Office of the Secretary of State on February 12, 2013.

TRD-201300600
Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 463-1858

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CHAPTER 26. RULES OF PRACTICE AND PROCEDURES

The Texas Historical Commission (THC) proposes new Chapter 26, §§26.1 - 26.27, concerning Rules of Practice and Procedures. New §§26.1 - 26.27 will replace the current §§26.1 - 26.22, 26.24, 26.25, and 26.27 that are contemporaneously proposed for repeal in this issue of the *Texas Register.*

New §§26.1 - 26.27 update, reorganize, and streamline these rules by creating separate subchapters related to general provisions (Subchapter A), identification and designation of landmarks (Subchapter B), archeology (Subchapter C), historic buildings and structures (Subchapter D), and memoranda of understanding with other state agencies (Subchapter E). Additionally, the term State Archeological Landmark is changed to State Antiquities Landmark to reflect the fact that both buildings and archeological sites can be designated as landmarks.

Section 26.2, concerning Scope, provides an overview of the Antiquities Code of Texas (Texas Natural Resources Code, Title 9, Chapter 191) and how it is implemented through this chapter. In §26.3, concerning Definitions, certain definitions are eliminated when redundant with terms explained in context in the rules. Section 26.4, concerning Professional Qualifications and Requirements, is moved from Definitions to make these requirements easier to reference. No major changes are made to the qualifications.

Section 26.7, concerning Location and Discovery of Cultural Resources and Landmarks, is expanded to reflect relevant provisions of the Antiquities Code of Texas that were not previously addressed in the rules. Project notification addresses the different notification requirements for state agencies and political subdivisions of the state. Inventory and documentation of state agency buildings reflects the requirements of Texas Natural Resources Code, Title 2, Chapter 31. Procedures for project review and emergency situations are elaborated to better address the provisions of the Antiquities Code of Texas and existing practice. Section 26.8, concerning Designation Procedures for Publicly Owned Landmarks, includes additional procedural safeguards for designation of historic buildings and structures. A nomination for a building or structure must include a deed or legal description of the property. Opportunities are provided for political subdivisions and third-party applicants to assess the fiscal impact of the designation of a building or structure. Historic buildings and structures may be marked with a medallion similar to that used for the Recorded Texas Historic Landmark designation, rather than the small marker used for archeological sites. The process for institutions of higher education to contest designation of a building or land is explained. Section 26.9, concerning Designation of Private Property, also includes procedural safeguards. The nomination must be accompanied by proof of ownership, such as a deed record. Commission staff will file the property owner's consent and notice of designation in the deed records, rather than relying on the owner to perform this critical step. Buildings and structures will be marked with a medallion, rather than the small marker used for archeological sites.

In §26.19 the criteria for evaluating historic buildings and structures for landmark designation are reorganized to more closely follow the National Register of Historic Places criteria for evaluation. The property must retain integrity, as determined by the executive director of the commission. Relative to the National Register of Historic Places listing prerequisite for buildings and structures, clarification is added that properties within a historic district must be contributing to the district in order to be eligible for landmark designation. Section 26.20, concerning Application for Historic Buildings and Structures Permits, is updated to allow electronic submission of permit applications and digital photography of areas of proposed work. Section 26.21, concerning Issuance and Restriction of Historic Buildings and Structures Permits makes multiple changes to how permits are issued, and greater involvement of the Antiquities Advisory Board is provided throughout this section. Permits and permit extensions may be issued by staff or referred to the board and commission for consideration. Expired permits are considered in default and may be referred to the board for action. Permits and permit extensions can be issued for a period as short as six months, to allow for small projects or encourage timely submission of completion reports. Completion reports are required for all permit types, including previously exempted new construction only to substantiate the work was completed and its location on the site. To better reflect the Antiquities Code of Texas, the process for institutions of higher education to contest the terms of a permit is explained.

Section 26.22, concerning Historic Buildings and Structures Permit Categories, is a new section, moved from Application for Historic Buildings and Structures Permits to make the permit categories easier to reference and mirror the organization of the

Archeology subchapter. Architectural investigation and hazard abatement are split into two separate permit categories to better reflect the scope of permitted work. Section 26.23, concerning Reports Relating to Historic Buildings and Structures Permits, includes changes to report formats that may be required. Historic structure report requirements more closely mirror federal standards and require historical background and context in addition to evaluation of existing conditions and work recommendations. Historical documentation requirements are largely merged into the two previous categories. Electronic copies of the completion reports are now required and digital photography is now allowed for most reports. Section 26.24, concerning Compliance with Rules for Historic Buildings and Structures Permits, provides procedures tailored to the specific issues arising with historic buildings and structures permits. Permits may be placed on hold by staff to allow for negotiation to bring the permit back into compliance with the rules or permit terms, as an interim step before permit cancellation is considered by the board and commission.

Section 26.25, concerning Memorandum of Understanding with the Texas Department of Transportation (TxDOT), removes most references to the THC and TxDOT consultation efforts with regard to federal undertakings because these matters are handled under the Programmatic Agreement that TxDOT and the THC have with the Federal Highway Administration. Provisions have also been created for TxDOT professional archeologists to now be issued project specific Antiquities Permits for their in-house investigations and standards have been established for when archeological investigations are warranted in association with cemeteries that adjoin highway rights of way. Other changes involved a reorganization of the structure of this agreement document.

Section 26.26, concerning Memorandum of Understanding with the Texas Water Development Board (TWDB), primarily reflects the changing nature of how the archeological staff members at the TWDB consult with the THC and interact with TWDB financial assistance. In recent years, TWDB archeologists have no longer performed field investigations for financial assistance recipients, and instead review potential need for cultural resource investigations in order to determine if conditions will apply to the loans or grants being provided to fund construction, therefore the new Memorandum of Understanding reflects that change.

Section 26.27, concerning Memorandum of Understanding with the Texas Parks and Wildlife Department (TPWD), reflects very modest changes in the consultation process between the THC and TPWD. These changes primarily address concerns about third party archeological investigations on TPWD lands.

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

Mr. Wolfe has also determined that for each year of the first five-year period the new sections are in effect the public benefit anticipated as a result of the new sections will be an increased efficiency and effectiveness in the implementation of the Antiquities Code of Texas. Additionally, Mr. Wolfe has determined that there will be no effect on small businesses; and there are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

13 TAC §§26.1 - 26.6

The new sections are proposed under §442.005(b), (h), (q), and (r); and §442.007(e) of the Texas Government Code and §191.052 of the Texas Natural Resources Code which provides the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

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

§26.1. Object.

As authorized in Title 9, Chapter 191 (§191.052), of the Texas Natural Resources Code, otherwise known as the Antiquities Code of Texas, the Texas Historical Commission, hereafter referred to as the commission, is specifically empowered to adopt rules and conditions related to the administration and enforcement of the Antiquities Code of Texas.

§26.2. Scope.

For purposes of implementing the Antiquities Code of Texas, the commission is the statutorily created body responsible for protecting and preserving State Antiquities Landmarks (landmarks) under the Texas Natural Resources Code, Title 9, Chapter 191.

(1) Section 191.092 of the Texas Natural Resources Code declares that it is the public policy and in the public interest of the State of Texas to locate, protect, and preserve landmarks, including sites, objects, buildings, structures and historic shipwrecks, and locations of historical, archeological, educational, or scientific interest including, but not limited to, prehistoric American Indian or aboriginal campsites, dwellings, and habitation sites, aboriginal paintings, petroglyphs, and other marks or carvings on rock or elsewhere which pertain to early American Indian or other archeological sites of every character, treasure imbedded in the earth, sunken or abandoned ships and wrecks of the sea or any part of their contents, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants, prehistory, history, government, or culture in, on, or under any of the lands of the State of Texas, including the tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.

(2) Section 191.093 of the Texas Natural Resources Code states that all landmarks are afforded some level of consideration prior to being affected by a proposed project.

(3) Section 191.0525 of the Texas Natural Resources Code requires that notice be provided to the commission before breaking ground at a project location on state or local public land. This step ensures that project effects on landmarks, whether or not they have currently been identified, are appropriately considered. Upon notification, the commission will determine if the project affects a landmark or whether the project area warrants a survey to identify potential landmarks. Section 26.7 of this title (relating to Location and Discovery of Cultural Resources and Landmarks) describes the notification requirements and review process.

(4) Section 191.091 and §191.092 of the Texas Natural Resources Code provide that archeological sites and historic buildings and structures on lands belonging to state agencies or political subdivisions of the State of Texas are landmarks or may be eligible to be designated as landmarks. Landmark designation may be initiated by the public agency, the commission, or a third party. Section 191.094 of the Texas Natural Resources Code allows for the designation of landmarks on private property. Section 26.8 and §26.9 of this title describe the designation procedures for landmarks.

(5) Section 191.054 and §191.055 of the Texas Natural Resources Code state that the commission oversees investigations or project work though a permitting process. The commission uses permits to establish the terms under which work may proceed. Subchapters C and D of this chapter describe the permitting process for archeological permits and historic buildings and structures permits, respectively.

(6) Documents referenced in this chapter, including landmark nomination and permit application forms, are available on the commission website at www.thc.state.tx.us or by contacting the commission.

§26.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. These definitions also clarify the interpretation of terms and phrases used in the Antiquities Code of Texas but not defined therein.

(1) Accession--The formal acceptance of a collection and its recording into the holdings of a curatorial facility and generally includes a transfer of title. For held-in-trust collections, stewardship but not title is transferred to the curatorial facility.

(2) Antiquities Advisory Board--A ten-member board that advises the commission in reviewing matters related to the Antiquities Code of Texas.

(3) Antiquities Permit or Permit--Authorization for work on a designated or potential State Antiquities Landmark, or survey investigations to determine if cultural resources are present. Permit types include Archeological Permits (§26.15 of this title) and Historic Buildings and Structures Permits (§26.22 of this title).

(4) Applicant--Relative to an Antiquities Permit, an applicant is the controlling agency, organization, or political subdivision having administrative control over a publicly owned landmark or the owner of a privately owned landmark. Applicant may also refer to an individual or private group that desires to nominate a building or site for landmark designation.

(5) Archeological site--Any land or marine-based place containing evidence of prehistoric or historic human activity, including but not limited to the following:

(A) Habitation sites. Habitation sites are areas or structures where people live or have lived on a permanent or temporary basis.

(B) Native American open campsites which were occupied on a temporary, seasonal, or intermittent basis.

(C) Rock shelters, in general, are a special kind of campsite. These sites are located in caves or under rock overhangs and have been occupied either: temporarily, seasonally, or intermittently.

(D) Non-Native American campsites are the cultural remains of activities by people who are not Native American.

(E) Residence sites are those where routine daily activities were carried out and which were intended for year-round use.

(F) Non-Native American sites may include, in addition to the main structure, outbuildings, water systems, trash dumps, garden areas, driveways, and other remains that were an integral part of the site when it was inhabited.

(G) Non-habitation sites. Non-habitation sites result from use during specialized activities and may include standing structures.

(i) Rock art and graffiti sites consist of symbols or representations that have been painted, ground, carved, sculpted, scratched, or pecked on or into the surface of rocks, wood, or metal, including but not limited to Native American pictographs and petroglyphs, historical graffiti and inscriptions.

(ii) Mines, quarry areas, and lithic procurement sites are those from which raw materials such as flint, clay, coal, minerals, or other materials were collected or mined for future use.

(iii) Game procurement and processing sites are areas where game was killed or butchered for food or hides.

(iv) Fortifications, battlefields, training grounds and skirmish sites including fortifications of the historic period and the central areas of encounters between opposing forces, whether a major battleground or areas of small skirmishes.

(v) Cache--A collection of artifacts that are deliberately hidden for future use. Caches are often discovered in burials or in caves and usually consist of ceremonial and ritual objects, functional objects or emergency food supplies.

(6) Archeological Survey Standards for Texas--Minimum survey standards developed by the commission in consultation with the Council of Texas Archeologists.

(7) Artifacts--The tangible objects of the past that relate to human life and culture. Examples include, but are not limited to projectile points, tools, documents, art forms, and technologies.

(8) Board--The Antiquities Advisory Board.

(9) Building--A structure created to shelter any form of human activity, such as a courthouse, city hall, church, hotel, house, barn, or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn.

(10) Burials--Marked and unmarked locales set aside for human burial purposes. Burials may contain the remains of one or more individuals located in a common grave in a locale. The site area encompasses the human remains present and also gravestones, markers, containers, coverings, garments, vessels, tools, and other grave objects which may be present.

(11) Cemetery--A place that is used or intended to be used for interment, and includes a graveyard, burial park, mausoleum, or any other area containing one or more graves. Cemeteries are considered historic if interments within the cemetery occurred at least fifty (50) years ago. Individual burials within a cemetery are not considered historic unless the interments occurred at least fifty (50) years ago.

(12) Commission--The Texas Historical Commission and its staff.

(13) Committee, or Antiquities Committee, or Texas Antiquities Committee--As redefined by the 74th Texas Legislature within §191.003 of the Texas Natural Resources Code, committee means the commission and/or staff members of the commission.

(14) Conservation--Scientific laboratory processes for cleaning, stabilizing, restoring, preserving artifacts, and the preservation of buildings, sites, structures and objects.

(15) Council of Texas Archeologists--A non-profit voluntary organization that promotes the goals of professional archeology in the State of Texas.

(16) Council of Texas Archeologists Guidelines--Professional and ethical standards which provide a code of self-regulation for archeological professionals in Texas with regard to field methods, reporting, and curation.

(17) Cultural landscape--A geographic area, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values. Cultural landscapes include historic sites, historic designed landscapes, and historic vernacular landscapes, as further described in the National Park Service's Preservation Brief 36: Protecting Cultural Landscapes.

(18) Cultural resource--Any building, site, structure, object, artifact, historic shipwreck, landscape, location of historical, archeological, educational, or scientific interest, including, but not limited to, prehistoric and historic Native American or aboriginal campsites, dwellings, and habitation sites, archeological sites of every character, treasure embedded in the earth, sunken or abandoned ships and wrecks of the sea or any part of the contents thereof, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants' prehistory, history, government, or culture. Examples of cultural resources include Native American mounds and campgrounds, aboriginal lithic resource areas, early industrial and engineering sites, rock art, early cottage and craft industry sites, bison kill sites, cemeteries, battlegrounds, all manner of historic buildings and structures, local historical records, cultural landscapes, etc.

(19) Curatorial facility--A museum or repository.

(20) Default--Failure to fulfill all conditions of a permit or contract, issued or granted to permittee(s), sponsors, and principal investigator or investigative firm, before the permit has expired.

(21) Defaulted permit--A permit that has expired without all permit terms and conditions having been met before the permit expiration date.

(22) Designated historic district--An area of archeological, architectural, or historical significance that is listed in the National Register of Historic Places, either individually or as a historic district; designated as a landmark, or nominated for designation as a landmark; or identified by State agencies or political subdivisions of the State as a historically sensitive site, district, or area. This includes historical designation by local landmark commissions, boards, or other public authorities, or through local preservation ordinances.

(23) Destructive analysis--Destroying all or a portion of an object or sample to gain specialized information. For purposes of this chapter, it does not include analysis of objects or samples prior to their being accessioned by a curatorial facility.

(24) Discovery--The act of locating, recording, and reporting a cultural resource.

(25) Disposal--The discard of an object or sample after being recovered and prior to accession, or after deaccession.

(26) District--A significant concentration, linkage, or continuity of sites, buildings, structures, or objects unified historically or aesthetically by plan or physical development. See also "designated historic district."

(27) Eligible--Archeological sites or other historic properties that meet the criteria set forth in §§26.10 - 26.12 and §26.19 of this title, are eligible for official landmark designation.

(28) Exhumation--The excavation of human burials or cemeteries and its associated funerary objects by a professional archeologist, or principal investigator.

(29) Groundbreaking--Construction or earth moving activities that disturb lands, buildings, or structures owned or controlled by state agencies or political subdivisions of the state.

(30) Held-in-trust collection--Those state-associated collections under the authority of the commission that are placed in a curatorial facility for care and management; stewardship is transferred to that curatorial facility but not ownership.

(31) Historic buildings and structures--Unless clearly specified otherwise, historic buildings and structures refers to buildings, structures, cultural landscapes, and non-archeological sites, objects, and districts designated or nominated for designation as landmarks.

(32) Historic property--A district, site, building, structure or object significant in American history, architecture, engineering, archeology or culture.

(33) Historic time period--For the purposes of landmark designation, this time period is defined as extending from A.D. 1500 to 50 years before the present.

(34) Integrity--The authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's historic or prehistoric period, including the property's location, design, setting, materials, workmanship, feeling, and association.

(35) Investigation--Archeological or architectural activity including, but not limited to: reconnaissance or intensive survey, testing, exhumation, or data recovery; underwater archeological survey, test excavation, or data recovery excavations; monitoring; measured drawings; or photographic documentation.

(36) Investigative firm--A company or scientific institution that has full-time experienced research personnel capable of handling investigations and employs a principal investigator, and/or project architect, or other project professional as applicable under "professional personnel" in paragraph (49) of this section. The company or institution holds equal responsibilities with the professional personnel to complete requirements under an Antiquities Permit.

(37) Land-owning or controlling agency--Any state agency or political subdivision of the state that owns or controls the land(s) in question.

(38) Landmark--A State Antiquities Landmark.

(39) Mitigation--The amelioration of the potential total or partial loss of significant cultural resources. For example, mitigation for removal of a deteriorated historic building feature might include photographs and drawings of the feature, and installing a replacement that matches the original in form, material, color, etc. Mitigation for the loss of an archeological site might be accomplished through data recovery actions, to preserve or recover an appropriate amount of data by application of current professional techniques and procedures, as defined in the permit's scope of work.

(40) Monuments--Includes markers and structures erected to commemorate or designate the importance of an event, person, or place, which may or may not be located at the sites they commemorate. Included in this category are certain markers erected by the commission and county historical commissions, and markers and statuary located on public grounds such as courthouse squares, parks, and the Capitol grounds.

(41) National Register of Historic Places--A register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture maintained by the United States Secretary of the Interior. Information concerning the National Register of Historic Places is available through the commission or from the National Park Service at www.nps.gov/nr.

(42) Object--The term "object" can refer to artifacts or is used to distinguish from buildings and structures those constructions that are primarily artistic in nature or are relatively small in scale and

simply constructed. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment. Examples of objects include artifacts, monuments, markers, and sculpture.

(43) Permit application offense--Failure to properly apply for a permit and/or receive authorization for an emergency permit by the commission, prior to the actual performance of an archeological investigation or other project work.

(44) Permit censuring--A restriction in the ability of a principal investigator or other professional personnel and/or an investigative firm or other professional firm to be issued a permit under the auspices of the Antiquities Code of Texas.

(45) Permittee--The landowning or controlling individual or, public agency and/or a project sponsor that is issued an Antiquities Permit for an archeological investigation or other project work.

(46) Political subdivision--A unit of local government created and operating under the laws of this state, including a city, county, school district, or special district created under the Texas Constitution.

(47) Prehistoric time period--For the purpose of landmark designation, a time period that encompasses a great length of time beginning when humans first entered the New World and ending with the arrival of the Spanish Europeans, which has been approximated for purposes of these guidelines at A.D. 1500.

(48) Professional firm--A company or scientific institution that has professional personnel who meet the required qualifications for specific types of work. The company or institution holds equal responsibilities with the professional personnel to complete requirements under an Antiquities Permit.

(49) Professional personnel--Trained specialists who meet the professional qualifications standards in §26.4 of this title (relating to Professional Qualifications and Requirements) and are required to perform archeological and architectural investigations and project work.

(50) Project--Activity on a cultural resource including, but not limited to: investigation, survey, testing, excavation, restoration, demolition, scientific or educational study.

(51) Project sponsor--A public agency, individual, institution, investigative firm or other professional firm, organization, corporation, contractor, and/or company paying costs of archeological investigation or other project work, or that sponsors, funds, or otherwise functions as a party under a permit.

(52) Public agency--Any state agency or political subdivision of the state.

(53) Public lands--Non-federal, public lands that are owned or controlled by the State of Texas or any of its political subdivisions, including the tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.

(54) Recorded archeological site--Sites that are recorded, listed, or registered with an institution, agency, or university, such as the Texas Archeological Research Laboratory of the University of Texas at Austin.

(55) Register of professional archeologists--A voluntary national professional organization of archeologists which registers qualified archeologists.

(56) Research design--A written theoretical approach and a plan for implementing fieldwork that also explains the goals and methods of the investigation. A research design is developed prior to the implementation of the field study and submitted with a completed Archeological Permit Application.

(57) Ruins--A historic or prehistoric site, composed of both archeological and structural remains, in which the building or structure is in a state of collapse or deterioration to the point that the original roof and/or flooring and/or walls are either missing, partially missing, collapsed, partially collapsed, or seriously damaged through natural forces or structural collapse. Ruins are considered archeological sites, and historic buildings or structures recently damaged or destroyed are not classified as ruins.

(58) Scope of work--A summary of the methodological techniques used to perform the archeological investigation or outline of other project work under permit.

(59) Significance--Importance attributed to sites, buildings, structures and objects of historical, architectural, and archeological value which are landmarks and eligible for official designation and protection under the Antiquities Code of Texas. Historical significance is the importance of a property to the history, architecture, archeology, engineering or culture of a community, state or the nation, and is a trait attributable to properties listed or determined eligible for listing in the National Register of Historic Places or for state landmark designation.

(60) Site--Any place or location containing physical evidence of human activity. Examples of sites include: the location of prehistoric or historic occupations or activities, a group or district of buildings or structures that share a common historical context or period of significance, and designed landscapes such as parks and gardens.

(61) Shipwrecks--The wrecks of naval vessels, Spanish treasure ships, coastal trading schooners, sailing ships, steamships, and river steamships, among other remains of any waterborne craft that sank, ran aground, was beached or docked.

(62) State agency--A department, commission, board, office, or other agency that is a part of state government and that is created by the constitution or a statute of this state. The term includes an institution of higher education as defined by the Texas Education Code, §61.003.

(63) State Antiquities Landmark--An archeological site, archeological collection, ruin, building, structure, cultural landscape, site, engineering feature, monument or other object, or district that is eligible to be designated as a landmark or is already officially designated as a landmark.

(64) State Archeological Landmark--A State Antiquities Landmark.

(65) State associated collections--The collections owned by the State and under the authority of the commission. This includes the following:

(A) Permitted collections--Collections that are the result of work governed by the Antiquities Code of Texas on land or under waters belonging to the State of Texas or any political subdivision of the State requiring the issuance of a permit by the commission.

(B) Non-permitted collections--Collections that are the result of work governed by the Antiquities Code of Texas on land or under waters belonging to the State of Texas or any political subdivision of the State conducted by commission personnel without the issuance of a permit.

(C) Purchased collections--Collections that are the result of the acquisition of significant historical items by the commission through Texas Historical Artifacts Acquisition Program or use of other State funds.

(D) Donated collections--Collections that are the result of a gift, donation, or bequest to the commission.

(E) Court-action collections--Collections that are awarded to the commission by a court through confiscation of illegally-obtained archeological artifacts or any other material that may be awarded to the commission by a court of law.

(66) Structure--A work made up of interdependent and interrelated parts in a definite pattern of organization. The term "structure" is used to distinguish from buildings those functional constructions made usually for purposes other than creating human shelter. Constructed by man, it is often an engineering project. Examples of structures include bridges, power plants, water towers, silos, windmills, grain elevators, etc.

(67) Treasures embedded in the earth--In this context, "treasures" refers to artifacts and objects from submerged archeological sites. This can reference artifacts that are either contained within a ship's hull or are isolated yet associated with submerged historic and/or prehistoric archeological sites. The term "treasures" is not meant to imply that objects of monetary value, such as gold and silver, are separately protected under Antiquities Code of Texas. Additionally, "embedded in the earth" refers to artifacts or objects buried or partially covered in underwater sediments.

§26.4. Professional Qualifications and Requirements.

Professional personnel means individuals who are appropriately-trained specialists required to perform archeological and architectural investigations and project work. These individuals must possess the professional qualifications in this section and will be required to perform certain responsibilities under the terms of an Antiquities Permit as identified in this section. Any additional professions not referenced in this section must meet Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (As Amended and Annotated).

(1) Principal investigator. A professional archeologist with demonstrated competence in field archeology and laboratory analysis, as well as experience in administration, logistics, personnel deployment, report publication, and fiscal management. In addition to these criteria the principal investigator shall:

(A) hold a graduate degree from an accredited institution of higher education in anthropology/archeology, or a closely related field such as geography, geology, or history, so long as the degree program also included formal training in archeological field methods, research, and site interpretation; be registered as a professional archeologist by the Register of Professional Archeologists (RPA); have successfully completed investigations under an Antiquities Permit; and/or hold an active permit not in default;

(B) have at least twelve months of full-time experience in a supervisory role involving complete responsibility for a major portion of a project of comparable complexity to that which is to be undertaken under permit;

(C) have demonstrated the ability to disseminate the results of an archeological investigation in published form conforming to current professional standards;

(D) remain on-site a minimum of 25 percent of the time required for the field investigation, and whose name must appear on the project report;

(E) provide a field archeologist to supervise the field investigation in his or her absence; and

(F) testify concerning report findings in the interest of controversy or challenge.

(2) Professional archeologist. An individual who has a degree in anthropology, archeology or a closely related field if that degree also included formal training in archeological field methods, research, and site interpretation, conducts archeological investigations as a vocation, and whose primary source of income is from archeological work. Qualifications for specialized types of professional archeologists are listed in this paragraph.

(A) Prehistoric archeologist. An individual who is a professional archeologist and, in addition, meets the following conditions:

(i) has been trained in the field of prehistoric archeology;

(ii) has a minimum experience of two comprehensive archeological field seasons of three to six months in length on archeological site(s) that contain prehistoric (pre-16th century) archeological deposits; and

(iii) has published the results of those prehistoric archeological investigations.

(B) Historic archeologist. An individual who is a professional archeologist and, in addition, meets the following conditions:

(i) has been trained in the field of historical archeology;

(ii) has minimum experience of two comprehensive archeological field seasons of three to six months in length on archeological site(s) that contain historic (post-16th century) archeological deposits; and

(iii) has published the results of those historical archeological investigations.

(C) Underwater archeologist. An individual who is a professional archeologist and, in addition, is a competent diver with a minimum of two full seasons of underwater archeological testing or excavation projects. Training and experience sufficient for safe and proficient use of the specialized underwater remote sensing survey, excavation and mapping techniques, and equipment are required.

(D) Underwater archeological surveyor. An individual who has training and experience sufficient for safe and proficient supervision of appropriate remote sensing survey equipment operation, as well as for interpretation of survey data to identify anomalies and geomorphic features that may have some probability of association with submerged aboriginal sites and sunken vessels. This individual may represent the archeological interests on board the survey vessel in the absence of an underwater archeologist, as defined in subparagraph (C) of this paragraph.

(3) Project architect. An individual who is a licensed architect and has had full-time experience in a supervisory role on at least one historic preservation project. The project architect must be involved, at a minimum, in 25 percent of the time required to develop plans and specifications and manage project work for a Historic Buildings and Structures Permit project and, when not involved with the project, must assign a qualified preservation specialist to supervise the preservation project. At the discretion of commission staff, other individuals may fulfill the role of project architect, as follows:

(A) A preservation specialist may serve in the place of the project architect if: all responsibilities of a project architect under this title will be fulfilled by the project preservation specialist; and all education and experience criteria for a preservation specialist are met.

(B) A project engineer may serve in the place of the project architect if: the scope of project work is limited to structural stabilization and repair; all responsibilities of a project architect under

this title will be fulfilled by the project engineer; and all education and experience criteria for a project engineer are met.

(C) A landscape architect may serve in the place of the project architect if: the project scope is limited to landscape architecture; all responsibilities of a project architect under this title will be fulfilled by the project landscape architect; and all education and experience criteria for a project landscape architect are met.

(D) A project contractor may serve in the place of a project architect if: the project scope of work is limited to the demonstrated professional expertise of the contractor; all responsibilities of a project architect under this title will be fulfilled by the project contractor; and all the requirements for a project contractor are met.

(4) Preservation specialist. An individual who has a professional degree in architecture or a state license to practice architecture, plus one or more of the following:

(A) at least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or

(B) at least one year of full-time professional experience on historic preservation projects to include experience on projects similar to the project to be permitted; detailed investigations of historic buildings and structures; preparation of historic structures research reports; and preparation of plans and specifications for preservation projects.

(5) Project engineer. An individual who is a licensed civil or structural engineer and has had full-time experience in a supervisory role on at least one historic preservation project similar to the project to be permitted.

(6) Project landscape architect. An individual who is a licensed landscape architect and has had full-time experience in a supervisory role on at least one historic preservation project similar to the project to be permitted.

(7) Project contractor. An individual who has the appropriate training, certifications, and/or licenses for the type of project work specified in the permit application and at least one year of demonstrable full-time experience in applying the methods and practices of the proposed work on historic preservation projects similar to the project to be permitted.

(8) Historian. An individual who has a graduate degree in history or closely related field; or a bachelor's degree in history or a closely related field plus one of the following:

(A) at least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or

(B) substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

(9) Geomorphologist or geoarcheologist. An individual who holds a graduate degree in geology, geomorphology, archeology, or other closely related field, and has had sufficient training to adequately evaluate the sedimentology, stratigraphy, and pedology of deposits in the field and be competent to describe and analyze the deposits using standard terminology and methods. This person should also have general archeological experience in the area in which the investigations are to occur.

§26.5. Antiquities Advisory Board.

As permitted by Texas Government Code, §442.005(r), the commission hereby creates the Antiquities Advisory Board (hereafter referred to as the board). The board shall make recommendations to the commission on issues related to the Antiquities Code of Texas, Texas Natural Resources Code, Title 9, Chapter 191. The board is composed of the following ten membership positions: three members of the commission appointed by the chair, a representative of the Texas Archeological Society (TAS) who is nominated in consultation between TAS and the commission, a representative of the Council of Texas Archeologists (CTA) who is nominated in consultation between CTA and the commission, a state agency archeologist who is nominated in consultation between state agencies that employ archeologists and the commission, two historians nominated by the commission from the discipline of Texas history, and two historic architects nominated by the commission, in consultation with the Texas Society of Architects, from the discipline of historic architecture. The chair of the board is appointed by the chair of the commission, from one of the three commission members that serve on the board. The vice chair will be elected each odd year by the board from within their membership. The archeologists, historians and historic architects serve two-year terms that expire on February 1, of either odd or even numbered years, as determined by the commission. All recommendations made by the board are brought to the commission by the board chair, or one of the other commission members who serve on the board. The board will accomplish its specific duties in the following manner.

(1) Consider and discuss all proposed landmark nominations and any non-adjudicative issues or disputes specifically related to Antiquities Code of Texas and associated permitting issues that are brought before them by the commission, members of the board, or the public.

(2) Function as preliminary reviewers for the commission unless otherwise directed by the commission, or refused by a complainant(s).

(3) Vote on final recommendations related to appropriate issues of concern and present those recommendations to the commission.

(4) Conflicts of interest.

(A) Any member of the board who has a conflict of interest related to an issue that comes before the board shall recuse himself/herself from voting and participating in the discussion on that issue. Prior to any deliberations concerning the issue with which a member of the board has a conflict of interest, the member with a conflict shall announce, for the record, that such a conflict exists and physically absent and recuse himself/herself from the decision-making process and not vote on that matter. Board minutes must indicate which member recused himself/herself and the reason(s) for the recusal.

(B) For the purpose of this chapter a conflict of interest would result if a vote by a member of the board is likely to result in a financial benefit or personal gain for any of the following individuals:

(i) the member of the board;

(ii) any person within the second degree of consanguinity or affinity to the person, which includes a spouse, sibling, parent, grandparent, child or grandchild, whether by blood or marriage;

(iii) a business partner of the member; or

(iv) any organization for profit in which the member, or any person of clauses (ii) and (iii) of this subparagraph, that is serving or is about to serve as an officer, director, trustee, partner, or employee. A financial benefit includes, but is not limited to, grant money, contract, subcontract, royalty, commission, contingency, brokerage fee, gratuity, favor, or any other things of real or potential pecuniary value.

(5) Pursuant to Texas Government Code, §2110.008, the board must be reauthorized by the commission every four years during the commission's first regularly scheduled quarterly meeting of that year.

§26.6. Permit Monitoring.

Any member, employee, or agent of the commission and any officer in charge of land owned or controlled by the State of Texas or his or her designee may, at any time, visit the cultural resource undergoing permitted project work, or area or site being investigated under permit. Such a representative of the state may examine the ongoing areas of work, the field records, materials, and specimens being recovered.

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 February 12, 2013.

TRD-201300601
Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 463-1858

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SUBCHAPTER B. IDENTIFICATION AND DESIGNATION OF LANDMARKS

13 TAC §§26.7 - 26.9

The new sections are proposed under §442.005(b), (h), (q), and (r); and §442.007(e) of the Texas Government Code and §191.052 of the Texas Natural Resources Code which provides the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

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

§26.7. Location and Discovery of Cultural Resources and Landmarks.

(a) It is the public policy and in the interest of the State of Texas to locate archeological sites and other cultural resources, in, on, or under any land within the jurisdiction of the State of Texas per Texas Natural Resources Code, §191.002.

(b) The commission shall provide for the discovery and/or scientific investigation of publicly owned cultural resources in accordance with Texas Natural Resources Code, §191.051.

(c) The commission, state agencies, political subdivisions of the state, and law enforcement agencies shall work together to locate and protect cultural resources when deemed prudent, necessary, and/or in the best interest of the state per Texas Natural Resources Code, §191.174.

(d) To achieve these mandates, the commission shall review construction plans for projects on public lands prior to development to determine the project's potential impact to cultural resources, and invoke its power to issue Antiquities Permits and supervise Antiquities Permit investigations in accordance with Texas Natural Resources Code, §191.054. These mandates and the review of construction plans that may adversely affect archeological sites and historic buildings or structures are accomplished in the following manner.

(1) Project notification. As provided by Texas Natural Resources Code, §§191.0525, 191.054, and 191.098, public agencies shall notify the commission before groundbreaking on public land or construction projects that could take, alter, damage, destroy, salvage, or excavate archeological sites, historic buildings or structures, designated historic districts, or other cultural resources or landmarks on non-federal public land in Texas. The notification must contain a brief written scope of work and a copy of the appropriate topographical quadrangle map with clearly marked project boundaries and photographs of the buildings or structures involved in the project work.

(A) State agencies.

(i) State agencies, other than institutions of higher education, shall furnish the commission with documentation of each building possessed by the agency that is 45 years old or older, pursuant to Texas Natural Resources Code, Chapter 31 (General Land Office), §31.153. After an agency's initial report, it must annually furnish documentation on each building that was acquired after the date of the previous submission and is 45 years old or older on the date of the current submission, or is possessed by the agency and has become 45 years old since the date of the previous submission.

(ii) State agencies must send advance notification at least 30 days prior to any groundbreaking, or at least 60 days prior to altering, renovating, or demolishing a building that is 50 years old or older per §191.098 of the Texas Natural Resources Code.

(B) Political subdivisions. Political subdivisions must send advance notification at least 30 days prior to any project that affects a cumulative area larger than five acres or disturbs a cumulative area of more than 5,000 cubic yards, whichever measure is triggered first, or if the project is inside a recorded archeological site or designated historic district, as defined in §26.3(22) of this title (relating to Definitions).

(C) Categorical exclusions. Since many activities conducted on non-federal public land have little, if any, chance to damage cultural resources, the following activities do not require notification:

(i) water injection into existing oil and gas wells;

(ii) upgrading of electrical transmission lines when there will be no new disturbance of the existing easement;

(iii) seismic exploration activity when there is no ground penetration or disturbance;

(iv) building and repairing fences that do not require construction or modification of associated roads, fire breaks, or previously disturbed ground;

(v) road maintenance that does not involve widening or lengthening the road;

(vi) installation or replacement of meter taps;

(vii) controlled burning of fields;

(viii) animal grazing;

(ix) plowing, if the techniques are similar to those used previously;

(x) installation of monuments and sign posts unless within the boundaries of designated historic districts;

(xi) maintenance of existing trails;

(xii) land sales and trades of land held by the permanent school fund and permanent university fund;

(xiii) permanent school fund and permanent university fund leases, easements, and permits, including mineral leases and pooling agreements, in which the lessee, grantee, or permittee is specifically required to comply with the provisions of this chapter;

(xiv) oil, gas, or other mineral exploration, production, processing, marketing, refining, or transportation facility or pipeline project in an area where the project will cross state or local public roads, rivers, and streams, unless they contain a recorded archeological site or a designated state land tract in Texas' submerged lands; and

(xv) maintenance, operation, replacement, or minor modification of an existing oil, gas, or other mineral exploration, production, processing, marketing, refining, or transportation facility or pipeline.

(D) Emergency situations. Advance notification is not required for immediate remediation of a fire, spill, or other emergency associated with an existing facility located on state or local public lands if the emergency requires an immediate response. Notification of actions taken in response to an emergency must be submitted within 15 days of the action. If cultural resources were affected by the emergency or remediation measures, or may be affected by any long-term actions, the commission will respond in accordance with paragraph (2) of this subsection.

(2) Project review. Once the commission receives a complete notification, a response will be provided within 30 days (unless otherwise provided for within §191.0525 of the Texas Natural Resources Code) of receipt of the review request. The commission shall review submitted documentation and notify the public agency if archeological sites, historic buildings, or structures involved in the work are landmarks or are eligible for landmark designation, and/or of the possible need for a survey to locate cultural resources situated in the proposed development tract. The commission may also issue advisory comments if a building or structure is historically significant but not eligible for landmark designation. If the commission does not respond within 30 days, the public agency may proceed without further notice to the commission. Expedited reviews may be accommodated on a case-by-case basis if warranted.

(3) Project coordination. If a survey investigation or review of project work is required, professional personnel meeting the applicable requirements of §26.4 of this title (relating to Professional Qualifications and Requirements) will perform the investigations or work under an Antiquities Permit in accordance with §§26.13 - 26.18 and §§26.20 - 26.24 of this title.

(4) Construction discovery. Any person working on public lands who discovers an archeological site, building, or structure that may qualify for designation as a landmark according to the criteria listed in §§26.10 - 26.12 and §26.19 of this title shall cease work and report such discovery to the state agency or political subdivision owning or controlling the property and to the commission. Upon notification, the commission staff will respond within two business days. The commission may initiate designation proceedings if it determines the site to be a significant cultural or historical property, and/or may issue a permit for mitigative archeological investigation or any other investigation. The cost of a proper investigation, excavation, or preservation of such a landmark or potential landmark will be borne by the owner or developer of the property rather than by the commission.

§26.8. Designation Procedures for Publicly Owned Landmarks.

(a) Nomination. Any group, public or private, individual, or public agency may submit a property in public ownership to the commission for official designation as a landmark. The nomination must be submitted to the commission on a form approved by the commission, and the commission will determine whether the nomination is complete. The nomination shall indicate the nature of the property's significance: as an archeological site, shipwreck, cache or collection, historic building or structure, or any combination thereof, per the criteria for evaluation specified in §§26.10 - 26.12 and §26.19 of this title.

(1) Third-party nominations. Any private individual or private group that desires to nominate a property owned by a political subdivision as a landmark must complete and return to the commission a nomination form, and must give notice of the nomination at the individual's or group's own expense, in a newspaper of general circulation published in the city, town, or county in which the building or site is located. If no newspaper of general circulation is published in the city, town, or county, the notice must be published in a newspaper of general circulation in an adjoining or neighboring county that is circulated in the county of the applicant's residence. The notice must:

(A) be printed in 12-point boldface type;

(B) include the exact location of the building or site; and

(C) include the name of the group or individual nominating the building or site.

(D) An original copy of the notice and an affidavit of publication signed by the newspaper's publisher must be submitted to the commission with a nomination form. The commission will not consider a site owned by a political subdivision for designation as a landmark unless the notice and affidavit required by this section are attached to a nomination form. This notification must be received by both the commission and the public agency a minimum of 60 days prior to a regularly scheduled public meeting of the commission at which the nomination may be considered. All decisions regarding when a nomination will be considered by the commission will be made by the executive director of the commission.

(2) Requirements for buildings and structures. Nominations for buildings and structures must be accompanied by a deed or other legal description of the property nominated for designation. For a building or structure owned by a political subdivision, the nomination may be accompanied by a statement assessing fiscal impacts of the potential designation on the political subdivision.

(b) Evaluation. The executive director of the commission will determine whether the nomination is complete and acceptable, whether the property is eligible for designation, and when the nomination will be placed on the agenda of one of the commission's public meetings. In support of such determinations, the commission's staff will review the property according to the criteria for evaluation specified in §§26.10 - 26.12 and §26.19 of this title. Staff will recommend whether the nature of the property's significance indicated on the nomination form is accurate and if other areas should be considered.

(c) Notification of nomination. If the commission's staff wishes to nominate a property for landmark designation or intends to forward a nomination received for consideration, it must give the public agency or agencies that own the property a written notification that a nomination will be considered by the commission at one of its regularly scheduled public meetings. This notification must be received by the public agency a minimum of 15 days prior to the regularly scheduled public meeting of the commission at which the nomination is scheduled to be presented. The commission must also send the public agency complete site information on the proposed nomination. For a building or structure owned by a political subdivision, the notification will invite the political subdivision to submit a statement assessing the fiscal impacts of the potential designation.

(d) Interim protection and notification. Once a valid nomination for a landmark building or structure has been received and the commission's staff determines the property is eligible for designation, no project work may be undertaken on the property without a permit issued by the commission unless or until the commission denies the nomination or designation. Information regarding this protection will be included in the commission's notice on the nomination to the property owner.

(e) Presentation of nominations. Following staff evaluation and recommendations, nominations will be presented to the Antiquities Advisory Board. Written notice of the presentation will be sent to the owner. The Antiquities Advisory Board will review each nomination, the staff recommendations related to each nomination, and any testimony given by the owner of the property and the public at large. The Antiquities Advisory Board will then pass on its recommendations regarding each nomination to the commission. The chair of the Antiquities Advisory Board, or one of the other commission members who serve on the board, will present the nomination and recommendations to the commission at one of its public meetings.

(f) Comment period. No vote on final designation may be taken by the commission for a minimum period of 30 days, during which time all concerned parties may present evidence in support of or against designation of the property. Comments may be submitted to the commission at any time prior to the designation vote described in subsection (g) of this section, including during public testimony at the commission meeting where the vote will occur. Comments should address the property's merits in light of the criteria specified in §§26.10 - 26.12 and §26.19 of this title.

(1) Political subdivisions. Comments may address the fiscal impact on a political subdivision from the designation of a building or structure owned by the political subdivision, per §191.092(h) of the Texas Natural Resources Code.

(2) Institutions of higher education. Comments may address the impact on an institution of higher education from the designation of a building or land owned by the institution. If an institution of higher education notifies the commission during this timeframe that it protests to the proposed designation of a building or land under its control as a landmark, the matter becomes a contested case under the provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001. The hearing officer and the commission will follow the procedures and take into account the criteria listed in §191.021(b) of the Texas Natural Resources Code. Weighing these criteria against the criteria specified in §§26.10 - 26.12 and §26.19 of this title, the commission shall designate a property under the control of an institution of higher education as a landmark only if the record before the commission establishes by clear and convincing evidence that such designation would be in the public interest.

(g) Presentation of designation and designation vote. After the minimum comment period of 30 days has elapsed, the commission may consider the property for designation at one of its public meetings. The owners of the property will be informed of the agenda by written notice at least 15 calendar days in advance of the meeting date. Any person may present evidence or testify at the meeting when the final decision is to be made. The commission may then vote to designate, to deny designation, to request further information, or to make any other decision.

(h) Additional evidence. If designation of a property is denied, the owner or applicant may present additional evidence at any time for the commission's reconsideration. The new evidence will be considered by the commission at a duly-noticed meeting.

(i) Additional hearings. Any owner of a property designated as a landmark who is aggrieved by the designation procedure as applied to his or her property will receive a full evidentiary hearing upon request, or the formal designation can be removed by action of the commission.

(j) Notification of designation. Written notification of the commission's decision regarding the designation of a property as a landmark will be forwarded to the owner.

(k) Listing and marking of landmarks. If a property is officially designated as a landmark, the property will be listed in the commission's inventory, a current list of all historic buildings, structures, sites, objects, and districts so designated. Landmarks may be marked with a marker or medallion, to be installed by commission staff or designee.

(1) Archeological sites designated as landmarks may be marked with a landmark marker, if deemed appropriate by the commission. The UTM coordinate of the marker will be retained in the commission's records.

(2) Historic buildings and structures designated as landmarks may be marked with a medallion bearing the words "State Antiquities Landmark". Third-party nominators shall pay the cost associated with the medallion. A photograph of the installed medallion showing its context will be retained in the commission's records.

(l) Privileged or restricted information. The location of archeological sites is not public information. However, information on sites may be disclosed to qualified professionals as provided by Chapter 24 of this title (relating to Restricted Cultural Resource Information).

(m) For previously designated landmarks, commission staff may propose an amendment to clarify the designation boundaries, nature of the property's significance, or other information pertinent to the designation. The commission shall follow the process in this section in considering such an amendment.

§26.9. Designation of Private Property.

(a) Designation procedure. Cultural resources of national, state, or local significance in private ownership may be nominated by individuals or institutions holding title to the property on which the resources are located. The nomination must be submitted to the commission on a form approved by the commission. In addition to the nomination requirements listed in §26.8(a) of this title (relating to Designation Procedures for Publicly Owned Landmarks), the nomination must be accompanied by proof of ownership, such as a deed record. The nomination form shall contain language that expressly states the owner's consent to landmark designation by signing the form. A site, building, or structure on privately owned property, which is designated as a landmark by the commission, is afforded the same protection under the Antiquities Code of Texas as resources on public property. The nomination and designation hearing process for the designation of privately owned property will follow the same basic procedures set forth in §26.8 of this title.

(b) Recordation and marking of landmarks on private property. Upon designation, the commission shall record the property owner's consent and notice of the designation in the deed records of the county in which the property is located, provide the property owner with a copy of the filed instrument, and retain a copy of the filed instrument in the commission's records. Landmarks shall be marked with a marker or medallion, to be installed by commission staff or designee immediately after designation.

(1) Archeological sites designated as landmarks shall be marked with a landmark marker. The UTM coordinate of the marker will be retained in the commission's records.

(2) Historic buildings and structures designated as landmarks shall be marked with a medallion bearing the words "State Antiquities Landmark". The property owner shall pay the cost associated with the medallion as a condition of designation. A photograph of the installed medallion showing its context will be retained in the commission's records.

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 February 15, 2013.

TRD-201300647
Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 463-1858

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SUBCHAPTER C. ARCHEOLOGY

13 TAC §§26.10 - 26.18

The new sections are proposed under §442.005(b), (h), (q), and (r); and §442.007(e) of the Texas Government Code and §191.052 of the Texas Natural Resources Code which provides the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

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

§26.10. Criteria for Evaluating Archeological Sites.

The commission shall use one or more of the following criteria when assessing the appropriateness of official landmark designation, and/or the need for further investigations under the permit process:

(1) the site has the potential to contribute to a better understanding of the prehistory and/or history of Texas by the addition of new and important information;

(2) the site's archeological deposits and the artifacts within the site are preserved and intact, thereby supporting the research potential or preservation interests of the site;

(3) the site possesses unique or rare attributes concerning Texas prehistory and/or history;

(4) the study of the site offers the opportunity to test theories and methods of preservation, thereby contributing to new scientific knowledge; and

(5) there is a high likelihood that vandalism and relic collecting has occurred or could occur, and official landmark designation is needed to ensure maximum legal protection, or alternatively, further investigations are needed to mitigate the effects of vandalism and relic collecting when the site cannot be protected.

§26.11. Criteria for Evaluating Shipwrecks.

Shipwrecks may be considered significant and be recognized or designated as landmarks provided that the following conditions are met:

(1) the shipwreck is located on land owned or controlled by the State of Texas or one of its political subdivisions;

(2) the shipwreck is pre-twentieth century or is otherwise historically significant and is 50 years old or older in age; and

(3) the remains consist of a shipwreck sunken, abandoned, or a wreck of the sea, or are represented by the ship's remains and/or contents or related embedded treasure.

§26.12. Criteria for Evaluating Caches and Collections.

Caches and collections may be considered significant and be recognized or designated as landmarks, provided that at least one of the following conditions is met:

(1) the cache or collection was assembled with public funds or taken from public lands;

(2) preservation of materials is adequate to allow the application of standard archeological or conservation techniques;

(3) the cache or collection is of research value, thereby contributing to scientific knowledge; or

(4) the cache or collection is of historic value or contributes to a theme.

§26.13. Application for Archeological Permits.

(a) Justification for investigation. Investigations undertaken on publicly owned cultural resources or to locate or discover such resources must be oriented toward solving a particular research problem, preparation of a site for public interpretation, or for the purpose of salvaging information and specimens from a site threatened with immediate destruction.

(b) Eligibility for application. Permits to conduct investigations of any nature on landmarks or for the discovery of potential landmarks, or on lands owned or controlled by agencies or political subdivisions of the state will be issued exclusively by the commission under the conditions provided in the Antiquities Code of Texas and in this chapter.

(1) Permits may be issued by the commission to scientific and educational institutions, nonprofit corporations and organizations, investigative firms, and governmental agencies which have demonstrated their ability to carry out proper archeological investigations through their own staffs, including one or more professional archeologists who can serve as principal investigators, and who will supervise the project, or through a contract with a professional archeologist who can serve as a principal investigator. Permits may also be issued to individuals and private corporations who:

(A) retain a professional archeologist who can serve as a principal investigator for the investigations, and can be in direct charge of the project from field investigation through preservation of collections and analysis of data to reporting of results; and

(B) if required by the commission or the terms or conditions of a Memorandum of Understanding, provide proof that adequate funds, equipment, facilities, and personnel are available to properly conduct the investigation as proposed to the commission, and to report the results. The commission may require a performance bond to be posted as part of the application process.

(2) State or local archeological societies and archeological stewards wishing to conduct investigations on landmarks must have a principal investigator and be limited to non-compliance, investigation activities.

(3) Principal investigators holding one or more defaulted permits are not eligible to be issued additional permits until all terms and conditions of defaulted permits are met.

(4) Principal investigators and investigative firms that are currently censured due to permit application offenses are not eligible to be issued a permit. Once the censure period has lapsed the censured

principal investigator or investigative firm will be eligible to be issued a permit.

(5) No permits will be issued if the principal investigator and/or investigative firm cannot commit to direction of the permitted investigations by the principal investigator.

(c) Application for permit. Permit application forms may be obtained from the commission. Any institution, corporation, organization, museum, investigative firm, or individual desiring a permit for investigations must file a completed application with the commission prior to the proposed beginning date of the project. Special circumstances may require that a permit be issued on short notice when a site is threatened with immediate destruction. When a permit is issued for emergency salvage of a site threatened with destruction, the same rules apply as with all permits. The permit application must include:

(1) a statement of the purpose of the investigation;

(2) an outline of the proposed work and research design;

(3) the proposed beginning date for the fieldwork and the length of time that will be devoted to the entire project;

(4) name, address, and telephone number of the principal investigator, sponsor, and landowning or controlling agency;

(5) an accurate plotting of the particular site or area to be investigated on a 7.5' USGS quadrangle map and locational data indicating the universal transverse mercator (UTM) coordinates;

(6) the name of the facility where the specimens, material, and data will be kept during analysis of results of the investigation; and

(7) evidence of adequate funds, personnel, equipment, and facilities to properly complete the proposed investigation.

(d) Research design. Research designs prepared prior to implementation of a field study and submitted with an Archeological Permit Application Form are essential to the success of scientific objectives, resource management decision-making, and project management. The following points should be considered during formulation of a research design.

(1) Research designs present the essential objectives of a project or study and the means by which those objectives will be attained. As such, the research design is an efficient means of communicating with resource managers and the professional community at large.

(2) The research design provides a logical basis for detailed project planning and assessment of resource significance.

(3) Research designs may contain a wide range of theoretical and methodological approaches. Similarly, research designs may address general research objectives, as well as more focused types of problem orientation. The following criteria shall be met.

(A) Care should be taken to link the research design to existing topical and geographical bodies of data.

(B) The nature of the resources under investigation should be considered.

(C) The need to address a wide range of cultural and scientific resources should be considered.

(D) Applied research that addresses cultural resource management and impact-related issues should be recognized as necessary and incorporated into research designs whenever possible.

(E) The skills of the investigative personnel must be appropriate to the project goals and specifications in the research design. In many cases it may be desirable to include provisions for consultants with special expertise.

(4) Research designs should not be conceived as rigid, unchanging plans. Although research designs may place relatively greater emphasis on certain kinds of scientific questions and certain kinds of data collection, as circumstances warrant, the investigator is not relieved of responsibility to recognize other research. Whether such alternative questions and data warrant changes in the ongoing investigation is a question that should be explicitly addressed and answered in the context of pertinent resource management objectives and research goals. It is expected that research designs will be modified as projects develop. A conscious effort should be made to modify research designs to exploit new information efficiently. It is to be expected that some research objectives will, for many reasons, prove less productive than anticipated, while other objectives will become more important than anticipated or perhaps materialize for the first time. The crucial objectives in the modification process are:

(A) demonstrated progress in solving stated problems; and

(B) subsequent modification of a research design on the basis of explicit, rational decisions intended to attain stated goals.

§26.14. Issuance and Restrictions of Archeological Permits.

(a) Review by controlling entities. It is the responsibility of the permit applicant to obtain all necessary permissions and signatures prior to submitting an archeological permit application.

(b) Special requirements. When a permit is issued, it will contain all special requirements governing that particular investigation; it must be signed by the director of the Archeology Division of the commission, or his or her designated representative.

(c) Permit period. No permit will be issued for less than one year nor more than ten years, but a permit may be issued for any length of time as deemed necessary by the commission in consultation with the principal investigator.

(d) Transferal of permits. No permit issued by the commission will be assigned by the permittee in whole or in part to any other institution, museum, corporation, organization, or individual without acknowledgement of the original permittee and the consent of the commission.

(e) State site survey forms. TexSite electronic forms for all sites recorded as a result of activities undertaken through an Antiquities Permit will be completed and submitted to the Texas Archeological Research Laboratory at the University of Texas in Austin, upon the completion of field work.

(f) Permit expiration date. The expiration date shall be specified in each permit and is the date by which all terms and conditions must be completed for that permit. It is the responsibility of the permittee, sponsor, investigative firm, and principal investigator to meet any and all permit submission terms and conditions prior to the expiration date listed on the permit.

(1) Expiration date notification. Principal investigators will be notified 60 days in advance of permit expiration date.

(2) Expiration date extension. A principal investigator must complete and submit a First Extension Application Form to the commission if he or she desires an extension of the final due date for the completion of an Antiquities Permit that was issued to him or her. The Archeology Division (AD) of the commission will review the submitted Permit Extension Form, determine whether an extension is warranted and extend the permit expiration date once for no less than one year and no more than ten years as deemed appropriate. In

addition, and upon review and recommendations by the Antiquities Advisory Board, the commission may by a majority vote of its members, approve or disapprove an additional extension of the expiration date of an Antiquities Permit beyond the single extension that the AD staff of the commission is authorized to issue under subsection (c) of this section and this paragraph, provided that the following conditions are met:

(A) the principal investigator (PI), and/or the investigative firm listed under an Antiquities Permit must complete and submit a Second Extension Application Form to the commission, and give an oral presentation before the Antiquities Advisory Board justifying why a second permit expiration-date extension is warranted; and

(B) the justification for the second extension must show that the extension is needed due to circumstances beyond the control of the PI. Examples include, but are not limited to: funding problems, death of the PI, and artifact curation problems.

(g) Expiration responsibilities. Investigative firms must ensure that a principal investigator is assigned to a permit at all times, regardless of whether the permit is active or has expired. Both the principal investigator and investigative firm should ensure that a new principal investigator is assigned to the permit if, for any reason, the original principal investigator must leave the project. The assignment of a new principal investigator must be approved by the commission.

(h) Permit amendments. Proposed changes in the terms and conditions of the permit must be approved by the commission.

(i) Permit cancellation. The commission may cancel an Antiquities Permit if one or more of the following events occur:

(1) death or withdrawal of the principal investigator without a new principal investigator being named and approved by the commission;

(2) cancellation of the project by the sponsor or permittee prior to the completion of the archeological field investigations;

(3) violation of §26.18 of this title (relating to Compliance with Rules for Archeological Permits); and/or

(4) destruction of the permit area or associated cultural resources due to natural causes, prior to the substantive completion of the field investigations being performed under the permit.

(j) Permit censuring. The commission may censure a principal investigator and/or investigative firm if it is found that two or more permit application offenses have occurred in one calendar year. Permit application offenses result when investigations are performed without first obtaining a permit from the commission. Permit censuring will render a principal investigator and investigative firm ineligible for issuance of another permit for six months after a finding by the board that two or more permit application offenses have occurred in one year period.

§26.15. Archeological Permit Categories.

Several categories of permits oriented toward specific types of investigation are issued by the commission. The following is a list of permits associated with archeological investigations:

(1) Annual permit. A public agency or institution may be granted an Annual Permit, allowing for survey, recording, study, protection, stabilization, or conservation projects that cover a number of similar investigations at different locations. The annual permit will be issued for a specific period of time and may be developed by the public agency or institution, and the commission either under the auspices of a Memorandum of Understanding (MOU) or by means of a letter agreement. Annual Permits may also be used to govern the survey, recording, study, protection, stabilization, and conservation projects related to designated landmarks or eligible landmarks. The Annual Permit will adhere to, but not be limited to, the commission's rules. The standards described in an Annual Permit will be administered by a qualified archeologist on the staff of or contracted by that public agency or institution. The commission will be informed through an annual report of all projects completed under the authority of the Annual Permit with details adequate to confirm compliance.

(2) Alternative mitigation permit. A permit issued for a mitigation alternative may require additional conditions including studies, investigations, or other actions as deemed necessary by the commission, and will be specified in the terms and conditions of the permit. Permission for construction to proceed may be granted depending upon the satisfaction of the terms of the permit. Alternative forms of mitigation may include, but are not limited to:

(A) monitoring of a proposed construction project to record and report the discovery of unanticipated, important archeological deposits;

(B) conducting archival and historical research to document the significance of the site;

(C) capping or burying in place important archeological deposits if deemed appropriate by the commission;

(D) protecting significant remaining portions of a site by donation of the undisturbed area to a nonprofit organization, state agency, or a political subdivision of the state; and

(E) by accusation and donation of a site or sites to a nonprofit organization, state agency, or a political subdivision of the state.

(3) Data recovery permit. This permit category is for the purpose of full investigation and extensive excavation of particular archeological site or sites. Data recovery must be based on a research design approved by the commission. The evidence from a skillfully accomplished archeological excavation provides a detailed picture of the human activities at the site; emphasis is placed on the information that can be elicited rather than on the artifacts. In data recovery, the archeological deposits are removed by digging and are, therefore destroyed. Permission for construction to proceed may be granted depending upon the results of this level of investigation. Specific requirements may be set forth by the commission in the permit. The destruction can be justified only if:

(A) it is done with such care that antiquities and cultural and environmental data in the area excavated are discovered, and if possible, preserved;

(B) information has been accurately recorded, whether its importance is immediately recognized or not, to remain available after the site has disappeared; and

(C) the record and results of the investigation are made available through publication.

(4) Emergency permit. A permit may be authorized by the commission for the purposes of performing investigations prior to formal application for a permit. Any of the above-referenced categories of investigations can be authorized under an emergency permit, but an emergency permit will only be issued under conditions where the investigations must be initiated or performed prior to the formal issuance of the permit. Legitimate emergency conditions include those situations when archeological deposits are discovered during development or other construction projects or under conditions of natural or man-made disasters that necessitate immediate action to deal with the

situation and findings. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(5) Exhumation permit. The excavation of human burials or cemeteries and its associated funerary objects by a professional archeologist, or principal investigator in accordance with the Texas Health and Safety Code, Chapter 711.

(6) Intensive survey permit. This permit category is for the purpose of an intensive 100 percent pedestrian survey of a project or permit area. Components of an intensive survey may include, but are not limited to, archival research, pedestrian survey, shovel and/or mechanical subsurface probing, surface artifact inventories, site recordation, and site assessment. Such a survey can be performed in many ways but must, at a minimum, conform to the Archeological Survey Standards for Texas, which are available through the commission and the Council of Texas Archeologists. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(7) Monitoring permit. Unless otherwise specifically authorized by the commission, this permit category is for the purpose of having a professional archeologist on-site to observe construction activities that may or will damage cultural resources. The archeologist is required to report findings and impacts to sites to the commission. Monitoring may be conducted during or after other phases of archeological investigation and may not involve the need for a separate permit. However, if monitoring is the only investigation deemed necessary relative to a construction activity, then a monitoring permit will be required. If previously unrecorded and significant archeological deposits are recorded during a monitoring investigation, construction activities in the immediate area of the find must stop and the principal investigator must notify the Archeology Division of the find within 24 hours. Specific requirements of monitoring may be required by the commission as part of the permit.

(8) Preservation of rock art. This permit category is for the purposes of preserving, removing, recording, and copying all manner of rock art. Preservation techniques which involve application of brushes, heat, chemicals, water, chalk, petroleum products, or other preparations to the rock surfaces are prohibited unless specifically authorized by the commission. Specific requirements may be included by the commission as part of the permit.

(9) Reconnaissance survey permit. This permit category is for the purpose of location, inventory, and assessment of cultural resources of a specific area by conducting archival searches and by searching for sites. Reconnaissance is limited to recording site locations, mapping, photographing, controlled surface sampling, and possible limited shovel testing. A reconnaissance survey does not take the place of an intensive survey; it is used to determine whether an intensive survey will be warranted. Specific requirements may be imposed by the commission as part of the permit. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(10) Testing permit. This permit category is for the purpose of detailed subsurface examination of cultural resources including systematic test excavations of a particular site or area. Testing must be oriented toward sampling a representative portion of a particular site or sites and may be conducted to determine if a landmark contains significant materials. Specific requirements may be imposed by the commission as part of the permit. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(11) Underwater excavations permit. In order to fulfill justified research objectives, or if damage to significant historic and prehistoric sites cannot be avoided, a full-scale underwater archeological excavation must be carried out under the direct supervision of an underwater archeologist. The intensive investigation and excavation must include documentary research and, for shipwrecks, detailed magnetometer work. Excavations must be supported by adequate equipment and supplies to insure proper recording, preservation, and the recovery of the maximum amount of data. Thorough analysis and a complete report are required. Proper antiquities conservation is required for all artifacts, and all specimens recovered are state property. Specific requirements may be included by the commission as part of the permit. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(12) Underwater survey permit. Underwater resources include shipwrecks and submerged prehistoric and historic sites. Surveys for these cultural resources are conducted with electronic instrumentation including the proton magnetometer, side-scan and subbottom sonar, and positioning systems. In some instances divers, using scuba gear search for and examine a specific site or structure. Work is conducted under the direct supervision of an underwater archeologist or underwater archeological surveyor. Data acquired are to be rendered to the commission along with an analysis and report. Specific requirements may be included by the commission as part of the permit. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(13) Underwater test excavations permit. Significant magnetic and/or acoustic anomalies discovered during survey must be tested by excavation under the direct supervision of an underwater archeologist in order to determine the source of the anomalies. Inspection by divers, coring, or other appropriate means must be used to test the nature of suspected prehistoric or historic sites. In the case of magnetic anomalies, sediment must be removed to allow identification, approximate dating, and determination of the importance of objects and sites found. Any artifacts recovered from state lands are property of the State of Texas. Extensive recovery during testing is discouraged. Accepted standards for provenience control and archeological data recovery must be maintained. Data must be analyzed and rendered to the commission in a written report. Proper conservation of any artifacts recovered must be carried out. Specific requirements may be required by the commission as part of the permit. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

§26.16. Reports Relating to Archeological Permits.

(a) With the exception of alternative mitigation and rock art preservation permits, a report and transmittal letter must be submitted to the commission describing the results of each permitted investigation. The report should meet the Council of Texas Archeologists (CTA) Guidelines for Cultural Resources Management Full or Short Reports, and must be submitted to the commission meeting the following requirements.

(1) The report must contain:

(A) a title page that includes: the name of the investigation project, the name of the principal investigator and investigative firm, the county or counties in which the investigations were performed, the Antiquities Permit number, and the date of publication;

(B) an abstract containing project field dates, project acreage, descriptions of the findings, a list of the sites recorded (with trinomials) and a clarification concerning which artifacts were curated and where they are or will be curated;

(C) specific recommendations of which sites merit official designation as landmarks; which sites appear to be eligible for

inclusion in the National Register of Historic Places; and which sites will be adversely affected by the proposed project;

(D) Map(s) with accurate plottings of the project area and archeological sites.

(2) One printed copy of the draft permit report and associated project area shapefiles must be submitted to the commission for review prior to the production of the final report. The draft report does not have to be bound, but should contain all of the basic content elements required for the final report. The final report must also contain any revisions in the draft that are required in writing by the commission.

(3) Upon completion of a permitted project, and at no charge to the commission, the permittee, sponsor, or principal investigator shall furnish the commission and the Texas State Library and Archives Commission, State Publications Depository Program (hereinafter, TSLAC) with one printed copy each of the final report. The commission's copy shall be an unbound copy that contains at least one map with the plotted location of any and all sites recorded, and two copies of a tagged PDF format of the report on an archival quality CD or DVD. One of the tagged PDF CDs or DVDs must include the plotted location of any and all sites recorded and the other should not include the site location data. The TSLAC copy shall be bound and should not contain the plotted location of sites.

(4) A completed Abstracts in Texas Contract Archeology Summary Form must also be submitted with the final report. An electronic copy of the abstract and the completed abstract form must also be forwarded to the commission and, when appropriate, a Curation Form must also be submitted with the final report.

(5) Eleven or more printed copies of all reports without the site location information should be distributed by the permittee, sponsor, or principal investigator, at no cost to the commission, to university-based libraries and archeological research facilities around the state. Recommended libraries include: the Texas Archeological Research Laboratory at the University of Texas, the Center for Archeological Studies at Texas State University, the Center for Archeological Research at UTSA, the Stephen F. Austin State University library, the Texas Tech University library, the Texas A&M University library, the UT El Paso library, the Southern Methodist University library, Dolph Briscoe Center for American History, Sul Ross State University library, and the West Texas A&M University library.

(b) When Antiquities Permit investigations result in negative findings, the report standards shall meet the CTA Guidelines for Cultural Resources Management Short Reports, and production must follow the same standards as set forth in subsection (a)(3) and (5) of this section.

(c) For reports related to alternative mitigation and rock art preservation permits any requirements will be stated in the permit conditions.

§26.17. Principal Investigator's Responsibilities for Disposition of Archeological Artifacts and Data.

(a) Processing. Principal investigators who receive permits shall be responsible for cleaning, conserving, cataloguing, packaging in archival materials; arranging for the curation of all collections, specimens, samples, and records; and for the reporting of results of the investigation.

(b) Ownership. All specimens, artifacts, materials, samples, original field notes, maps, drawings, photographs, and standard state site survey forms resulting from the investigations remain the property of State of Texas. Certain exceptions left to the discretion of the commission are contained in Texas Natural Resources Code, §191.052(b). The commission will determine the final disposition of all artifacts, specimens, materials, and data recovered by investigations on landmarks or potential landmarks, which remain the property of the State. Antiquities from landmarks are of inestimable historical and scientific value and should be preserved and utilized in such a way as to benefit all the citizens of Texas. Such antiquities shall never be used for commercial exploitation.

(c) Housing, conserving, and exhibiting antiquities from landmarks.

(1) After investigation of a landmark has culminated in the reporting of results, the antiquities will be permanently preserved in research collections at the curatorial facility approved by the commission. Prior to the expiration of the permit, proof that archeological collections and related field notes are housed in a curatorial facility is required through the submission of a curation form. Failure to demonstrate proof before the permit expiration date may result in the principal investigator and co-principal investigator falling into default status.

(2) Institutions housing antiquities from landmarks will also be responsible for adequate security of the collections, continued conservation, periodic inventory, and for making the collections available to qualified institutions, individuals, or corporations for research purposes.

(3) Exhibits of materials recovered from landmarks will be designed in such a way as to provide the maximum amount of historical, scientific, archeological, and educational information to all the citizens of Texas. First preference will be given to traveling exhibits following guidelines provided by the commission and originating at an adequate facility nearest the point of recovery. Permanent exhibits of antiquities may be prepared by institutions maintaining such collections following guidelines provided by the commission. A variety of special, short-term exhibits may also be authorized by the commission.

(d) Pursuant to Texas Natural Resources Code, §§191.091 - 191.092, all antiquities found on land or under waters belonging to the State of Texas or any political subdivision of the State belong to the State of Texas. The commission is charged with the administration of the Antiquities Code of Texas and exercises the authority of the State in matters related to these held-in-trust collections.

(e) Decisions regarding the disposal or destructive analysis of held-in-trust collections are the legal responsibility of the commission. Acceptable circumstances for disposal or destructive analysis are provided by this chapter. Exceptions may be considered by the commission. Under no circumstances will held-in-trust collections be disposed of through sale.

(f) Disposal. The commission's rules for disposal apply to objects and samples prior to accessioning that have been recovered from a site on public land or under public water under an Antiquities Permit issued by the commission.

(1) Disposal of recovered objects or samples from a site on public land or from public water under an antiquities permit issued by the commission must be approved by the commission. Approval for anticipated disposal is by means of an approved research design at the time the Antiquities Permit is issued. The manner in which the object or sample is to be disposed must be included in the research design. Additional disposal not included in the approved research design must be approved by the commission prior to any disposal action.

(2) The appropriate reasons for disposal include, but are not limited to, the following:

(A) Objects are highly redundant and without additional merit.

(B) Objects lack historical, cultural, or scientific value.

(C) Objects have decayed or decomposed beyond reasonable use and repair or by their condition constitute a hazard to other objects in the collection.

(D) Objects may be subject to disposal as required by federal laws.

(3) Items disposed of after recovery must be documented in the notes and final report, with copies provided to the curatorial facility.

(4) The commission relinquishes title for the State to any object or sample approved for disposal. The object or sample must be disposed of in a suitable manner.

§26.18. Compliance with Rules for Archeological Permits.

(a) If the permittee, project sponsor, principal investigator or other professional personnel, or investigative firm or other professional firm fails to comply with any of the rules of the commission or any of the terms of the specific permit involved, or fails to properly conduct or complete the project, or fails to act in the best interest of the state, or fails to meet terms and conditions of defaulted permits, the commission may cancel the permit and notify the permittee of such cancellation by certified letter, return receipt requested, mailed to the last address furnished to the commission by the permit applicant. When determined to be appropriate and upon notification of cancellation, the permittee, project sponsor, principal investigator and other professional personnel, and investigative firm or other professional firm shall, in the case of ongoing projects, cease work immediately, remove all personnel and equipment, and vacate the area or site within 24 hours. A permit that has been canceled can be reinstated by the commission if good cause is shown within 30 days.

(b) A principal investigator and investigative firm or other professional firm shall not proceed with an investigation without applying for and receiving an appropriate permit by the commission, or without having been officially authorized by the commission to proceed prior to issuance of an emergency permit. Failure to meet this requirement may result in the principal investigator, investigative firm, or professional firm being censured and denied issuance of permits for a six-month period. The commission will send a letter of reprimand to the principal investigator and/or investigative firm for each application offense. More than one permit application offense in a one-year period may result in permit censuring for a period of six months for each offense. If the commission determines that more than one permit application offense has occurred in one year, it may direct the staff to censure the principal investigator or other professional personnel, investigative firm, or professional firm in question. The censured parties will then be ineligible to be issued a permit for a period of six months for each offense.

(c) Project sponsors and permittees shall not encourage principal investigators, or investigative firms or other professional firms to perform investigations on public lands in the State of Texas without a properly issued permit. Such investigations proceeding with the knowledge of the project sponsor and/or permittee constitute a violation of the Antiquities Code of Texas. Such actions may result in the denial of a permit and prevent authorization for a development project to proceed relative to jurisdiction under the Antiquities Code of Texas. The commission may also require that the investigations performed without a permit be performed again under a properly issued permit.

(d) The rules and standards that must be followed in relationship to the curation of artifacts recovered under the jurisdiction of the Antiquities Code of Texas can be found under Chapter 29 of this title (relating to Management and Care of Artifacts and Collections).

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 February 15, 2013.

TRD-201300648
Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 463-1858

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SUBCHAPTER D. HISTORIC BUILDINGS AND STRUCTURE

13 TAC §§26.19 - 26.24

The new sections are proposed under §442.005(b), (h), (q), and (r); and §442.007(e) of the Texas Government Code and §191.052 of the Texas Natural Resources Code which provides the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

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

§26.19. Criteria for Evaluating Historic Buildings and Structures.

Buildings, structures, cultural landscapes, and non-archeological sites, objects, and districts may be designated as landmarks, provided that the following conditions are met:

(1) the property fits within at least one of the following criteria:

(A) the property is associated with events that have made a significant contribution to the broad patterns of our history, including importance to a particular cultural or ethnic group;

(B) the property is associated with the lives of persons significant in our past;

(C) the property embodies the distinctive characteristics of a type, period, or method of construction, represents the work of a master, possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction;

(D) the property has yielded, or may be likely to yield, information important in Texas culture or history;

(2) the property retains integrity at the time of the nomination, as determined by the executive director of the commission; and

(3) for buildings and structures only, the property must be listed in the National Register of Historic Places, either individually, or as a contributing property within a historic district. Contributing status may be determined by the Keeper of the National Register or the executive director of the commission.

§26.20. Application for Historic Buildings and Structures Permits.

(a) Permit application procedure.

(1) Applicant qualification. Only the controlling agency, organization, or political subdivision having administrative control over a publicly owned landmark or the owner of a privately owned landmark (applicant/permittee) may apply for and be issued a Historic Buildings and Structures Permit. It is the responsibility of the applicant

to obtain all necessary permissions and signatures prior to submitting a permit application for work on historic buildings, structures, and their sites.

(2) Notification. The commission must be notified of any anticipated, planned, or proposed work to a landmark or the site associated with a landmark. Notification must also be given for work to buildings or structures that have been nominated for designation as landmarks. Such notice should be made early enough to allow adequate time to prepare the formal application as described in paragraph (4) of this subsection. The notification must include a brief written description of the project and at least one photograph of the building or structure or affected portion of that building or structure. If a permit is required for the proposed scope of work, the commission staff will provide the applicant with the permit application form and notify him or her of the necessary attachments or application reports within 30 days of receipt of notification.

(A) Normal maintenance and repair. Work that does not have the potential to cause removal, damage or alteration to the integrity, form, or appearance of the materials, features, or landform of the historic building or structure and its site, is considered to be normal maintenance and repair, and therefore exempt from the required notification process, per Texas Natural Resources Code, §191.054. Cleaning surfaces with non-corrosive mild solutions and low-pressure water, repainting window frames or doorways with similar paints, or minor repairs such as replacing putty on windows are examples of normal maintenance and repair. Other work, however, may not constitute normal maintenance and repair. For example, permanent masonry damage can result from use of inappropriate cleaning methods, such as sandblasting, high pressure water cleaning, or the use of unsuitable chemicals, or from use of damaging repointing techniques and materials. Replacing historic windows damages the historical integrity of a building, and painting previously unpainted surfaces constitutes alteration. Such work is not considered normal maintenance or repair.

(B) Interior spaces. Nonpublic interior spaces are spaces that are inaccessible to the public, and alterations to those spaces are exempt from the required notification process, per Texas Natural Resources Code, §191.054. The interior spaces to be considered public and therefore not exempt are those spaces that are or were accessible to the public (lobbies, corridors, rotundas, meeting halls, courtrooms, offices of public officials, public employees, and services, etc.), or those that are important to the public because of any significant historical, architectural, cultural, or ceremonial value.

(3) Advance review. For more complex projects, it is advisable that the commission staff be consulted early in the planning or design process in order to avoid delays in issuing the final permit.

(4) Formal application. All applications must be submitted on the Historic Buildings and Structures Permit application form approved by the commission at least 60 days prior to the commencement of work or issuance of bid documents, whichever comes first. The application form may be submitted in hard copy with original signatures, or electronically with scanned signatures, to the mailing or email address indicated on the form. The project professional personnel must be a project architect who has the required experience on historic buildings and structures in the type of project work proposed, or other professional as provided for in §26.4(3) of this title (relating to Professional Qualifications and Requirements). At the request of commission staff, the professional personnel must submit a resume demonstrating the required education and experience.

(5) Emergency application. If emergency preservation or hazard abatement work must be performed quickly in a crisis situation or due to extenuating circumstances, the minimum 60 day submission requirement may be waived with approval from the commission staff. Staff shall determine appropriate procedures for issuance of emergency permits based on the specific circumstances and urgency of the work.

(6) Attachments. All permit applications must be accompanied by plans, specifications, or other documents prepared for the project that adequately describe the full scope of work. Large-format drawings or lengthy attachments must be submitted in hard copy. In addition, 4 by 6 inch color photographs of the overall building or structure and all areas of proposed work are required. Photographs may be taken with a 35 mm or digital camera. Digital photographs should have a resolution of at least 300 pixels per inch and may be printed on an inkjet or laser printer on high-quality paper.

(7) Application reports. See §26.23(a) of this title (relating to Reports Relating to Historic Buildings and Structures Permits) for a discussion of each type of report. In the case of more complex projects, one or more of the following reports may be required with the permit application:

(A) historic structure report;

(B) historical documentation;

(C) architectural documentation; and/or

(D) archeological documentation.

(8) Project reports. Depending upon the scope of work, one or more of the following reports may be required as a condition of a permit to be prepared during the course of a project and to be submitted upon completion of that project prior to expiration of the permit. All Historic Buildings and Structures Permits require a completion report. For projects that receive a grant under the Texas Historic Courthouse Preservation Program, described in Chapter 12 of this title, the completion report for the grant may suffice in lieu of a separate permit completion report, when specified by the commission. Any other required reports will be specified when the permit is issued. See §26.23(b) of this title for a discussion of each type of report:

(A) architectural documentation;

(B) archeological documentation;

(C) storage report; and/or

(D) completion report.

(9) Issuance of permit. Contract documents must not be issued for bidding purposes before a permit has been issued by the commission. If no response has been made by the commission within 60 days of receipt of any permit application, the permit shall be considered to be granted.

(b) Standards for the treatment of historic properties. The Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 and subsequent revisions; codified at 36 Code of Federal Regulations Part 67) are hereby adopted by reference by the commission and shall be considered to be a part of this chapter. Copies of these standards are available on the National Park Service website at www.nps.gov/tps/standards.html.

§26.21. Issuance and Restriction of Historic Buildings and Structures Permits.

(a) Permits are issued by the commission and must be signed by the executive director, the director of the Division of Architecture, or a designated representative. The executive director may choose to submit the permit application to the Antiquities Advisory Board for its consideration. Permits that are denied by commission staff may be appealed by the applicant to the Antiquities Advisory Board. The board shall review such applications at its next scheduled meeting, provided

it shall have a minimum of 30 days to prepare for such review. Recommendations of the board shall be taken to the next scheduled meeting of the commission by the chairman of the board or by one of the other commissioners who serve on the board for action thereon.

(b) Terms and conditions. When a permit is issued, it will contain all standard and special terms and conditions governing the project work.

(c) Permit period. No permit will be issued for less than six months, nor more than ten years, but may be issued for any length of time within those limits as deemed necessary by the commission in consultation with the applicant and project architect.

(d) Transferal of permits. No permit issued by the commission will be assigned by the permittee in whole or in part to any other institution, museum, corporation, organization, or individual without the consent of the commission.

(e) Permit expiration. The expiration date is specified in each permit and is the date by which all project work must be complete, including submission of the required completion report and fulfillment of all terms and conditions of the permit. It is the responsibility of the permittee, project architect, and professional firm to meet any and all permit terms and conditions prior to the expiration date listed on the permit.

(1) Expiration notification. The permittee and project architect will be notified 60 days in advance of permit expiration.

(2) Expiration extension. The permittee or project architect must provide a written request to the commission if an extension of the final due date for completion of the permit is desired. The request must detail the reason(s) an extension is necessary and state when completion of the permit requirements is expected. The Division of Architecture (DoA) of the commission will review the extension request to determine whether an extension is warranted. Permit extensions will be issued by letter and may extend the permit completion due date once for no less six months and no more than ten years as deemed appropriate. Permit extensions requested for preparation of the completion report, following substantial completion of the permitted work, will be issued for no greater than nine months, unless authorized by the Antiquities Advisory Board. If an additional extension is subsequently requested, the DoA may issue the extension or request that the Antiquities Advisory Board review the request and make a recommendation to the commission regarding further extension. The commission may, by a majority vote of its members, approve or disapprove an additional extension of the final due date of an Antiquities Permit, provided that the following conditions are met:

(A) the permittee, project architect, and/or the professional firm listed on the permit must provide written documentation to the Antiquities Advisory Board and give an oral presentation justifying why an additional permit due-date extension is warranted; and

(B) justification for the additional extension must show that the extension is needed due to circumstances beyond the control of the permittee, project architect, or professional firm. Examples include, but are not limited to: funding problems or death of the project architect.

(f) Expiration responsibilities. Professional firms must ensure that a project architect is assigned to a permit at all times, until all obligations under the permit have been fulfilled, regardless of whether the permit is active or has expired. Expired permits are considered to be in default and will be reported to the Antiquities Advisory Board. Commission staff or the board may request that the permittee, project architect, and/or professional firm appear and give an oral presentation regarding the need for an extension pursuant to subsection (e)(2) of this section, or the board may pursue other remedies as allowed under §26.24 of this title (relating to Compliance with Rules for Historic Buildings and Structures Permits).

(g) Permit amendments. Proposed changes in the terms and conditions of the permit must be approved by the commission's executive director, the director of the DoA, or their designated representative. This includes changes in the permitted project plans and specifications that could affect the integrity of the structure, building, or site.

(h) Permit hold or cancellation. The commission may place on hold or cancel a Historic Buildings and Structures Permit pursuant to §26.24 of this title under the following circumstances:

(1) the death of the project architect;

(2) failure of the permit applicant to fully fund the permitted project work;

(3) project work undertaken does not comply with the terms, conditions and approved project documents under the permit; and/or

(4) violation of §26.24 of this title.

(i) Institutions of higher education. If an institution of higher education notifies the commission that it protests the terms of a permit granted to an institution of higher education under this section, the matter becomes a contested case under the provisions of the Administrative Procedure Act, Texas Government Code §2001.051, et seq. The institution of higher education must notify the commission of its protest within 30 days of its receipt of notice of the terms of the permit to initiate a contested case. The hearing officer and the commission will follow the procedures and take into account the criteria listed in Texas Natural Resources Code, §191.021(c). Weighing these criteria against the criteria specified in §26.20(b) of this title (relating to Application for Historic Buildings and Structures Permits), the commission shall include a requirement in a permit only if the record before the committee establishes by clear and convincing evidence that such inclusion would be in the public interest.

§26.22. Historic Buildings and Structures Permit Categories.

All work done on historic buildings or structures and their sites will be reviewed, and issued permits when appropriate, in accordance with one or more of the following permit categories. Section 191.054 of the Texas Natural Resources Code authorizes the commission to issue permits for survey and discovery, excavation, restoration, demolition, or study. The following permit categories clarify specific scopes of work within these areas. Restoration is herein understood to include preservation, rehabilitation, restoration, and reconstruction as defined in the Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards), per §26.20(b) of this title (relating to Application for Historic Buildings and Structures Permits).

(1) Preservation permit. Preservation is the act or process of applying measures necessary to sustain the existing form, integrity, and materials of a cultural resource, including preliminary measures to protect and stabilize the building, structure, or site. Preservation consists of maintenance and repair of materials, features, or landforms of cultural resources, rather than extensive replacement and new construction. Preservation also includes the conservation of buildings, sites, structures, and objects.

(2) Rehabilitation permit. Rehabilitation is the act or process of making possible a compatible use for a property through repair, alterations, or additions, while preserving those portions or features of the property which convey its historical, architectural, or cultural values.

(3) Restoration permit. Restoration is the act or process of accurately depicting the form, features, and character of a property and its setting as it appeared at a particular period of time by means of the removal of features from later periods in its history and reconstruction of missing features from the restoration period.

(4) Reconstruction permit. Reconstruction is the act or process of depicting, by means of new construction, the exact form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location. Reconstruction of a non-surviving cultural resource, or any part thereof within the described limits of a designated landmark, will be reviewed and permitted in light of its impact on the historical, architectural, or cultural integrity of that site.

(5) Architectural investigation permit. If the applicant can demonstrate that careful investigation of a building or structure through controlled dismantling or sampling and testing of historic material or later modifications will contribute to the understanding of that building or structure's history, or of the history and culture of Texas in general, a permit for architectural investigation may be issued. This type of permit does not indicate approval for rehabilitation, demolition, or any other type of work, but may require replacement of removed materials or storage of selected samples.

(6) Hazard abatement permit. If hazardous materials exist in a historic building or structure and must be abated or removed in a project unrelated to other preservation, restoration or rehabilitation work, then a permit for hazard abatement may be issued. This type of permit does not indicate approval for rehabilitation, demolition, or any other type of work, but may require replacement of removed materials.

(7) Relocation permit. Under most circumstances, a permit to relocate a building or structure from its original site will not be issued unless the commission has been satisfied that there is a real and unavoidable threat to the building or structure's existence, and that the applicant has made a thorough effort to find the means to preserve the building or structure on its original site. If relocation is unavoidable, the building or structure should be relocated to a site that resembles its original setting as closely as possible. A relocation permit will require thorough documentation of the relationship between the building or structure and its existing site and documentation of the proposed new site and placement of the building or structure to demonstrate that the new site and setting are comparable to the original. An archeological investigation of both the old and new site locations may also be required.

(8) Demolition permit. Under most circumstances, a permit to demolish a building or structure will not be issued unless the commission is satisfied that there is a necessity due to deterioration of the building or structure that constitutes a threat to the health, safety, or welfare of citizens or a real and unavoidable threat to the building or structure's existence. The applicant must show that he or she has made a thorough effort to find the means to preserve the building or structure on its original site or, failing that, to relocate the building or structure to another site with a comparable setting. The applicant must show evidence that he or she has, in good faith, conducted a feasibility study and obtained estimates from appropriate professionals, invited and considered alternative suggestions and proposals, and otherwise explored all reasonable possibilities other than demolition. A demolition permit will require thorough documentation of the building or structure and its relationship to its existing site, as well as archeological investigation, as defined and required by the commission.

(9) New construction permit. Any new construction to be built within the described limits of a landmark must be reviewed and permitted in light of its impact on the historical, architectural, and cultural integrity of that cultural resource and its site. The applicant must submit plans, elevations, and sections that adequately describe the full scope of the project and its relationship to the existing building or structure and its site.

§26.23. Reports Relating to Historic Buildings and Structures Permits.

(a) Application reports. It is important in the case of complex projects to ensure the historical accuracy and/or appropriateness of the project by gathering and assessing important information relating to the property through investigation, research, and documentation. Based on the scope of a project, one or more of the following application reports may be required to be submitted as a part of the permit application. A permit may not be issued before all required application reports have been received. All application reports must be prepared under the supervision of professionally qualified individuals as specified in §26.4 of this title (relating to Professional Qualifications and Requirements).

(1) Historic structure report.

(A) Purpose. This report should be utilized to evaluate the existing conditions of the building or structure, to understand the changes to a property over time, to establish preservation objectives for the property, to schedule the accomplishment of these preservation objectives, and to better support the proposed work.

(B) When required. When a proposed rehabilitation, restoration, or reconstruction project involves fabricating significant missing architectural or landscape features, recapturing the appearance of a property at one particular period of its history, removing later additions, or significant changes to the building for rehabilitation, a historic structure report must be completed prior to application for a Historic Buildings and Structures Permit.

(C) Minimum report requirements. Documentation must follow the guidance of the National Park Service's Preservation Brief 43: The Preparation and Use of Historic Structure Reports (available on the National Park Service website at www.nps.gov/history/hps/tps/briefs/brief43.htm) and should include the following:

(i) historical background and context, including:

(I) name of the original architect and date of construction;

(II) information on important historical events or persons associated with the property;

(III) copies of extant historic plans and photographs of the property; and

(IV) oral history documentation, when possible;

(ii) chronology of development and use;

(iii) physical description;

(iv) evaluation of significance;

(v) condition assessment, including:

(I) photographic documentation of the existing conditions (Photographs must be at least 4 by 6 inches and may be taken with a 35 mm or digital camera. Digital photographs should have a resolution of at least 300 pixels per inch and may be printed on an inkjet or laser printer on high-quality paper.); and

(II) architectural drawings of the existing conditions;

(vi) historic preservation objectives;

(vii) requirements for work; and

(viii) work recommendations and alternatives, including intended modifications to the building or structure.

(2) Historical documentation.

(A) Purpose. Historical research and documentation assist in understanding the changes to a historic property over time and can better support proposed project work.

(B) When required. Historical documentation may be required at the request of the commission's staff, executive director, or the Antiquities Advisory Board to support work proposed under a permit.

(C) Minimum report requirements. Historical documentation must include the following:

(i) name of original architect and date of construction;

(ii) history of the use of and known modifications to the structure;

(iii) brief history including information on important historical events or persons associated with the structure;

(iv) copies of extant historic plans and photographs of the building or structure and site, or documentation of the specific historic features, areas or materials to be affected by proposed restoration or reconstruction work; and

(v) oral history documentation to support proposed restoration or reconstruction work, or to document historic structures and buildings proposed for relocation or demolition.

(3) Architectural documentation.

(A) Purpose. Documentation of cultural resources that will be lost or damaged due to rehabilitation, relocation, or demolition will ensure that a record of the cultural resource continues to exist after the loss or damage.

(B) When required. Architectural documentation must precede any work that will damage, alter, obscure, or remove significant architectural configurations, elements, details, or materials. Documentation that meets the required standards must be submitted for rehabilitation and restoration projects that will significantly alter a building, structure, or other cultural resource, and for all relocation and demolition permits.

(C) Minimum report requirements. Architectural documentation must meet the Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation (available on the National Park Service website at www.nps.gov/history/hdp), also referred to as Historic American Buildings Survey (HABS), Historic American Engineering Record (HAER), and Historic American Landscapes Survey (HALS) standards and guidelines. The commission will assign the level of documentation required (levels I-IV) based on the project work proposed and the significance of the cultural resource.

(4) Archeological documentation.

(A) Purpose. Many standing structures have an archeological component, and archeological remains exist in urban areas as well as rural areas. The information available from archeological investigations in and around a building or structure is important in conjunction with architectural and historical documentation for the synthesis and study of all related material.

(B) When required. When development or historic preservation treatment of a historic property makes disturbance of the earth unavoidable, the specific areas affected may need to be tested archeologically to determine if the undertaking will disturb or destroy archeological remains, including subsurface features of an aboveground structure. If the exploratory tests indicate the area has archeological value and if the development plans cannot be altered, the archeological data and artifacts directly affected by the project are to be recovered.

(b) Project reports. When the situation indicates it is advisable, one or more of the following project reports may be required to be compiled during the course of a project and submitted along with the completion report. All project reports must be compiled under the supervision of professionally qualified individuals as specified in §26.4 of this title.

(1) Architectural documentation. When investigation and documentation is not possible prior to commencement of work because of physical obstruction, or when previously obscured conditions are subsequently discovered, architectural documentation may be required during the course of a project (see subsection (a)(3) of this section).

(2) Archeological documentation. When investigation and documentation are not possible prior to commencement of work because of physical obstruction, or when previously obscured evidence is subsequently discovered, archeological documentation may be required during the course of a project. Archeological documentation may be required for relocation or demolition permits (see subsection (a)(4) of this section).

(3) Storage report.

(A) Purpose. Historic features or materials original to the building or structure or otherwise significant to the building or structure's evolution are important to the understanding of Texas culture and history.

(B) When required. When historic features or materials original or otherwise significant to the building or structure's history are removed during the course of a project, selected samples must be stored at the site or at a site approved by the commission, and a storage report must be filed.

(C) Minimum report requirements. Documentation must include the following:

(i) photo documentation of the structural or architectural elements to be removed in their original position and in storage (Photographs must be at least 4 by 6 inches and may be taken with a 35 mm or digital camera. Digital photographs should have a resolution of at least 300 pixels per inch and may be printed on an inkjet or laser printer on high-quality paper.);

(ii) written documentation of the existing condition of the elements prior to removal; and

(iii) written documentation of the storage (preservation) efforts, including the method and location of storage and any conservation efforts made.

(4) Completion report.

(A) Purpose. When work is done to a historic building or structure, it is important to record the changes that take place so that the building or structure's historic evolution might be completely documented for future study.

(B) When required. All Historic Buildings and Structures Permits require completion reports.

(C) Minimum report requirements. Written documentation must include the following:

(i) title page, including:

(I) project name;

(II) city, county;

(III) permit number;

(IV) date of report;

(ii) text, including:

(I) property name and location;

(II) primary personnel (names, titles, addresses, and telephone numbers), including:

(-a-) owner;
(-b-) lessee;
(-c-) architect;
(-d-) engineer;
(-e-) contractor;
(-f-) consultant(s);
(-g-) others;

(III) scope of work (major categories with corresponding costs);

(IV) project dates (beginning and ending);

(V) project narrative, including:

(-a-) description of work and description of anticipated future work (if any);

(-b-) description of special products, materials, and/or building techniques;

(-c-) description of intended use of the property; and

(VI) index of photographs.

(D) Photographic record. Photographic documentation is a significant part of the record of the project work. Representative views, before, during, and after project work, should be of the same area, to clearly illustrate the work as it progresses. Photographs must be at least 4 by 6 inches and may be taken with a 35 mm or digital camera. Digital photographs should have a resolution of at least 300 pixels per inch and may be printed on an inkjet or laser printer on high-quality paper. Photographs must include:

(i) before construction conditions;

(ii) during construction; and

(iii) after construction is complete.

(E) Report submittal. Submit the required completion report with original photographic documentation; photocopies are not acceptable. All completion reports must be printed on high-quality paper, submitted unbound, and accompanied by the report as a pdf (portable document format) file on compact disc. Submit the printed report and disc to the commission.

§26.24. Compliance with Rules for Historic Buildings and Structures Permits.

(a) Failure to seek a permit. Public owners, project sponsors, project architects, and professional firms shall not perform work on a historic building or structure that is designated as a landmark or nominated for designation as a landmark without applying for and having been issued a Historic Buildings and Structures Permit by the commission, or without having been officially authorized by the commission to proceed prior to issuance of an emergency permit. Work proceeding without a properly issued permit, with the knowledge of the public owner or project sponsor, constitutes a violation of the Antiquities Code of Texas and this chapter. The commission may require that remedial work be performed under a properly issued permit to address any damage to the landmark or may deny issuance of a permit for the work and prevent authorization for a development project to proceed relative to jurisdiction under the Antiquities Code of Texas. The commission may also censure a project architect or professional firm for performing unauthorized work, in accordance with subsection (c) of this section.

(b) Noncompliance with permit terms. If the permittee, project sponsor, project architect, professional firm, contractor, or craftsperson fails to comply with the terms of a permit, the commission may take action to bring the permit into compliance or censure the responsible firm or individual in accordance with subsection (c) of this section. Noncompliance includes failure to comply with any of the rules of the commission, any of the terms of the specific permit involved, or the Secretary of the Interior's Standards for the Treatment of Historic Properties; failure to properly conduct or complete the project, to complete any required reports, or to meet the terms and conditions of defaulted permits; or failure to act in the best interest of the state.

(1) Permit hold. The commission may place a noncompliant permit on hold. In the case of ongoing projects, work must cease immediately. Such hold may be conveyed by verbal or other informal communication from commission staff, to be followed by certified letter, return receipt requested, mailed to the last address furnished to the commission by the permittee. Commission staff will negotiate with the permittee, project sponsor, project architect, or professional firm to amend the permit. If an amendment cannot be reached that would bring noncompliant work into compliance with the rules, the commission staff will refer the permit to the Antiquities Advisory Board.

(2) Permit cancellation. The Antiquities Advisory Board will consider cases referred by the commission staff and may recommend that the commission cancel a permit. If a permit is canceled, the commission staff will notify the permittee of such cancellation by certified letter, return receipt requested, mailed to the last address furnished to the commission by the permittee. Upon notification of cancellation, the permittee, project sponsor, project architect, and professional firm shall remove all construction personnel and equipment from the area or site within 24 hours. A permit, which has been canceled, can be reinstated by the commission if good cause is shown within 30 days.

(c) Censure. The Antiquities Advisory Board may recommend that the commission censure a project architect, professional firm, contractor, or craftsperson. Such censure will result in the denial of permits to a project architect or professional firm, or the inability of a contractor or craftsperson to perform work under a permit, for a six-month period. Commission staff will send a letter of reprimand for each offense. More than one offense in a one year period could result in permit censuring for a period of six months for each offense.

(d) The commission may seek other remedies in accordance with Texas Natural Resources Code, Title 9, Chapter 191, Subchapter F (concerning Enforcement).

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

Filed with the Office of the Secretary of State on February 15, 2013.

TRD-201300649

Mark Wolfe
Executive Director
Texas Historical Commission
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For further information, please call: (512) 463-1858

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SUBCHAPTER E. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCIES

13 TAC §§26.25 - 26.27

The new sections are proposed under §442.005(b), (h), (q), and (r); and §442.007(e) of the Texas Government Code and §191.052 of the Texas Natural Resources Code which provides the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

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

§26.25. Memorandum of Understanding with Texas Department of Transportation.

(a) Purpose and Authority. This section contains the memorandum of understanding (MOU) entered into by the Texas Historical Commission (THC) and the Texas Department of Transportation (TxDOT) in accordance with Texas Government Code, §442.005 and §442.007; Texas Natural Resources Code, §191.0525(f); and Transportation Code, §201.607. The purpose of this MOU is to provide a formal mechanism for expediting THC review of TxDOT's transportation projects that potentially pose adverse effects on cultural resources. This MOU supersedes the previous MOU made effective on June 8, 2004.

(b) Applicability.

(1) Except as provided in subsection (e) of this section, this section generally applies to:

(A) a transportation project for which an environmental review is being or will be performed under 43 TAC Chapter 2 (relating to Environmental Review of Transportation Projects); or

(B) any other type of project coordinated at TxDOT's request.

(2) Federally funded, licensed or permitted projects may follow the procedures of this section only if doing so would not conflict with environmental rules promulgated by the lead federal agency.

(c) Programmatic Agreements.

(1) Provisions of this MOU may be implemented, in part, through a Programmatic Agreement (PA) among the Federal Highway Administration (FHWA), the Texas State Historic Preservation Officer (TSHPO), the Advisory Council on Historic Preservation (Council), and TxDOT.

(2) With respect to federally funded projects, instead of the procedures set forth in this MOU, THC and TxDOT shall use the applicable procedures outlined in their First Amended Programmatic Agreement Among the Federal Highway Administration, the Texas Department of Transportation, the Texas State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Implementation of Transportation Undertakings (PA-TU) and its successors to provide for innovation and efficiency in the timely development of TxDOT's transportation projects considerate of their impacts on cultural resources.

(3) TxDOT and THC will seek to revise the existing PA, amended in 2005, to reflect the streamlined procedures contained in this MOU.

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

(1) Antiquities permit--A permit issued by THC in order to regulate the taking, alteration, damage, exhumation, destruction, salvage, archeological survey, testing, excavation and study of state antiquities landmarks including prehistoric and historic archeological sites, and the preservation, protection, stabilization, conservation, rehabilitation, restoration, reconstruction, or demolition of historic structures and buildings designated as a state antiquities landmark (or listed in the National Register of Historic Places (NRHP)).

(2) Area of potential effects (APE)--The geographic space or spaces within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

(A) The area of potential effects for archeological properties will be confined to the limits of the proposed project right of way (including permanent and temporary easements), utility relocations designated by TxDOT, and project-specific locations designated by TxDOT. The area of potential effects also extends to the depth of impacts caused by the undertaking.

(B) The area of potential effects for non-archeological historic properties for all non-federal undertakings will be confined to the limits of the proposed project right of way (including permanent and temporary easements), utility relocations, and project-specific locations specifically designated by TxDOT.

(3) Cultural resources--A general term referring to buildings, structures, shipwrecks, objects, sites, and districts more than 50 years of age with the potential to have significance in local, state, or national history.

(4) Effect--Alteration to the characteristics of a historic property qualifying it for formal designation as a landmark.

(5) Eligibility--A property's eligibility for designation as a landmark, as set forth in this chapter.

(6) Emergency Permit--A permit that may be used by TxDOT under certain emergency circumstances for the purposes of performing investigations prior to formal application for an antiquities permit.

(7) Historic property--Any prehistoric or historic district, site, building, structure, or object that meets the requirements for designation as a landmark as set forth in this chapter.

(8) Minor widening--Roadway projects resulting in pavement profile widened to less than double their original width, resulting from adding travel/center-turn lanes or paved shoulders.

(9) Project-specific location--The location of specific material sources (e.g., base material, borrow and sand pits) and other sites used by a construction contractor for a specific project.

(10) State Antiquities Landmark (SAL)--Both Archeological and Non-archeological historic properties that are designated or eligible for designation as landmarks as defined in Chapter 191, Subchapter D of the Texas Natural Resources Code and identified in accordance with this chapter.

(11) THC--Texas Historical Commission.

(12) Transportation enhancement--An activity that is listed under 23 United States Code §101(a)(35), relates to a transportation

project, and is eligible for federal funding under 23 United States Code §133.

(13) Transportation Project--A project to construct, maintain or improve a highway, rest area, toll facility, aviation facility, public transportation facility, rail facility, ferry, or ferry landing. A transportation enhancement is also a transportation project.

(14) TxDOT--Texas Department of Transportation.

(e) Coordination Responsibilities.

(1) Texas Department of Transportation. The coordination responsibilities of TxDOT under this MOU are defined as follows.

(A) Except as provided in subsections (g) and (t) of this section, or other provisions of this chapter that exclude projects from coordination requirements, TxDOT shall coordinate review of transportation projects for which TxDOT is the project sponsor under §26.3(51) of this title (relating to Definitions) with THC for both archeological resources and cemeteries, and non-archeological historic properties, as described in this MOU.

(B) All coordination required by this MOU shall be conducted by or through TxDOT's Environmental Affairs Division or its successor as established by TxDOT administration, unless the Division (or its successor) and THC agree in writing to allow other appropriate organizational units of TxDOT or other entities approved by the respective agencies to conduct the coordination.

(C) Work in TxDOT right-of-way that is not associated with a project for which TxDOT is the project sponsor under §26.3(51) of this title is the responsibility of the project sponsor and not of TxDOT (see Texas Natural Resources Code §191.0525), except as provided under subparagraph (E) of this paragraph. The project sponsor is responsible for coordinating directly with THC for such work, using the terms of this MOU to the extent THC determines appropriate. Examples of projects that will be coordinated by the non-TxDOT project sponsor directly with THC include but are not limited to:

(i) on-system highway projects funded entirely with local funds;

(ii) utility relocations or installations within TxDOT right-of-way sponsored by other entities; and

(iii) driveway and access connections sponsored by other entities.

(D) TxDOT shall not be a signatory to any permit issued by THC to another entity for work on a project funded or sponsored by such other entity.

(E) In accordance with subsection (h) of this section, TxDOT may coordinate projects sponsored or funded by another entity under this MOU by agreement with the non-TxDOT project sponsor, and TxDOT will provide notice to THC when it coordinates such projects.

(2) THC. The coordination responsibilities of THC under this MOU are to conduct any review required by this section in an efficient manner, to provide timely feedback to TxDOT about projects coordinated under this section, and to apply any funding provided by TxDOT solely to the review of TxDOT's projects in an manner that most efficiently streamlines THC's effective review and early coordination.

(f) Qualifications of Staff and Use of Consultants.

(1) All cultural resource investigations executed under the terms of this MOU shall be implemented by staff who meet the requirements for Professional Personnel set forth in this chapter; or the Secretary of the Interior's Professional Qualification Standards (36 C.F.R. Part 61, Appendix A).

(2) TxDOT has the right to perform cultural resource investigations using staff or consultants who meet the professional standards cited in §26.4 of this title (relating to Professional Qualifications and Requirements).

(3) Cultural resource surveys, investigations, permit applications, and other work performed by consultants shall be coordinated with THC by or through TxDOT's Environmental Affairs Division or its successor as established by TxDOT administration, unless it and THC agree in writing to allow other appropriate organizational units of TxDOT or other entities approved by the respective agencies to coordinate the work.

(g) Projects Excluded from Review for Archeological Resources and Cemeteries.

(1) Routine roadway maintenance projects and projects with minor levels of ground disturbance, by their nature and definition, do not have the potential to affect historic properties, and do not require review of their potential project impacts on archeological resources or cemeteries by THC under this chapter or under this MOU. Such projects include vegetation control, traffic control, routine painting and striping, and other activities with less than 100 cubic yards of ground disturbance below the original grade. The following activities also do not require review of their potential impacts on archeological resources or cemeteries under this chapter or under this MOU:

(A) installation, repair, or replacement of fencing, signage, traffic signals, railroad warning devices, safety end treatments, cameras and intelligent highway system equipment;

(B) projects involving purchase or acquisition of land without associated ground-disturbing activities;

(C) routine structural maintenance and repair of bridges, highways, railroad crossings, picnic areas and rest areas;

(D) in-kind repair, replacement of lighting, signals, curbs and gutters, and sidewalks;

(E) crack seal, overlay, milling, grooving, resurfacing, and restriping;

(F) replacement, upgrade, and repair of safety barriers, ditches, storm drains, and culverts;

(G) intersection improvements, including repair or replacement of overpasses, that require less than 0.5 acres of additional right of way at each intersection;

(H) placement of riprap to prevent erosion of waterway banks and bridge piers provided no ground disturbance is required;

(I) all maintenance work between a highway and an adjacent frontage road;

(J) installation of noise barriers or alterations to existing publicly owned buildings less than 50 years old, to provide for noise reduction except in potential or listed National Register districts;

(K) driveway and street connections;

(L) all work within interchanges and within medians of divided highways;

(M) all work between the flowlines of the ditches and channels and above the original line and grade;

(N) ditch and channel maintenance, provided removal of fill is above the original line and grade;

(O) repairs needed as a result of an event, natural or man-made, which causes damage to a designated state highway, resulting in an imminent threat to life or property of the traveling public or which substantially disrupts or may disrupt the orderly flow of traffic and commerce;

(P) the installation and modification of sidewalks (including the addition of American with Disabilities Act (ADA) ramps) except:

(i) sidewalk installations where the depth of impacts exceeds one foot;

(ii) sidewalk and ADA ramp projects within the historic districts in the following cities or towns: Goliad, Rio Grande City, Roma, San Antonio, San Elizario, and San Ygnacio; and

(iii) sidewalk or ADA ramp projects within the limits of the following cities or towns: Anahuac, Nacogdoches, San Patricio, and Socorro;

(Q) design changes for projects that have completed all applicable review and consultation where the new project elements comprise only one or more of the activities listed in this section; or

(R) other kinds of undertakings jointly agreed to in writing by THC and TxDOT.

(2) Projects that are exempt from project-specific review for compliance with this chapter and review under this MOU, as specified in subsection (a) of this section, are also exempt from compliance with other THC rules regarding project-specific investigations or coordination for potential impacts to cemeteries promulgated under Texas Health and Safety Code, §711.012(c), unless one of the following two conditions is present:

(A) pavement would be extended to within 15 feet of the boundary of a known cemetery founded earlier than 1955; or

(B) another project element would directly affect known burials.

(h) Procedures for Project Coordination when the Project Requires Review for Archeological Resources and Cemeteries.

(1) For projects subject to review for archeological resources and cemeteries under this MOU, TxDOT will evaluate the APE for potential project effects to archeological historic properties and to determine whether the APE contains cemeteries. TxDOT must make reasonable efforts and act in good faith when complying with this requirement.

(2) TxDOT may approve projects to proceed to construction without review by THC when TxDOT staff finds that the project will not affect archeological historic properties and the project APE will not contain cemeteries.

(3) TxDOT will submit a quarterly report of projects evaluated and approved internally to THC.

(4) TxDOT will submit projects to THC for review when TxDOT staff finds the project may affect archeological historic properties or the project APE contains cemeteries. TxDOT may, at its discretion, submit projects for THC review in cases where TxDOT staff finds that the project will not affect archeological historic properties, and the project APE does not contain cemeteries.

(5) In its request for review, TxDOT will make one or more of the following findings, determinations, and recommendations:

(A) In cases where no archeological sites or cemeteries occur or are likely to occur in some or all of the APE, TxDOT will propose a finding of no effect in these portions of the APE and recommend that the project proceed to construction in these portions.

(B) In cases where an archeological site occurs within the APE but the portion of the site within the APE does not have characteristics that qualify it as an archeological historic property or is not likely to have such characteristics, TxDOT will propose a determination that the portion of the site in the APE is not an archeological historic property, find that the project will have no effect on archeological historic properties at the site location, and recommend that the project proceed to construction at the location of the site.

(C) In cases where the portion of a site within the APE has characteristics that qualify it as an archeological historic property, TxDOT will propose a determination that an archeological historic property occurs within the APE.

(D) In cases where the APE contains an archeological historic property or cemetery, TxDOT will either propose a finding that the project will have no adverse effect on the site or propose a finding that the project will have an adverse effect on the site.

(E) If a project will have an adverse effect on an archeological historic property or cemetery within the APE, TxDOT will also recommend to THC an appropriate means by which to resolve the potential adverse effect.

(i) The resolution of adverse effects may take one of the following forms:

(I) the avoidance of the site during construction;

(II) an alternative mitigation strategy, such as the preservation of a comparable site or the re-analysis of an existing collection;

(III) data recovery excavation or exhumation; or

(IV) another form of resolution approved by THC.

(ii) In cases where data recovery is the selected means for resolving adverse effects, TxDOT will coordinate with THC at several stages during the data recovery process according to the following procedures, unless TxDOT and THC agree in writing to different procedures:

(I) TxDOT will submit an initial data recovery plan as part of a permit application for data recovery to THC for review.

(II) TxDOT will submit a brief report, documenting whether the fieldwork met the terms of the initial data recovery plan and justifying any deviation, to THC for review. When appropriate, TxDOT will recommend that the project be approved to proceed to construction and destruction of any remaining portion of the site within the APE.

(III) TxDOT will submit a revised data recovery plan, based on a preliminary review of field data and recovered materials, to THC for review. When appropriate, TxDOT will recommend that the revised plan be adopted for the completion of data recovery analysis and reporting.

(IV) TxDOT will submit a draft data recovery report to THC for review. When appropriate, TxDOT will recommend that the report be accepted in partial satisfaction of the terms of the permit and in satisfaction of TxDOT's obligations for resolving the adverse effects of the project on the site.

(V) TxDOT will ensure that data recovery investigations do not begin before the State of Texas' legal right to ownership of the artifacts to be recovered has been secured.

(F) THC will respond within 20 calendar days of receipt of the TxDOT request for review. The response will include:

(i) a statement of concurrence or nonconcurrence with TxDOT's findings and recommendations;

(ii) a determination of site eligibility for all evaluated sites; and

(iii) any other comments relevant to the archeological resources or cemeteries which could be affected by the project.

(6) If THC does not respond within 20 calendar days, TxDOT may assume that THC concurs with TxDOT's findings, determinations, and recommendations and may proceed with the project in accordance with the procedures required in this MOU.

(i) Background Studies for Archeological Resources and Cemeteries.

(1) For projects subject to review for archeological resources and cemeteries under this MOU, based on the results of background research, TxDOT will identify projects or portions of projects' APEs that require archeological field investigation.

(2) Eligibility determinations that TxDOT performs under this MOU will not require field investigations if sufficient background information exists to demonstrate that the portion of the site to be affected does not have potential research value.

(3) Determinations that TxDOT makes under this MOU regarding the presence of cemeteries in project APEs may be made through the use of maps, project-area photographs, or other background research.

(j) Permits for Archeological Resources and Cemeteries. THC shall issue antiquities permits for reconnaissance survey, intensive survey, monitoring, eligibility testing, exhumations, and emergencies to archeological staff at TxDOT under the following terms:

(1) The archeological staff of TxDOT's Environmental Affairs Division, or its successor as established by TxDOT administration, oversees the work.

(2) The work shall be completed in accordance with the provisions of the MOU.

(3) THC shall not require TxDOT to submit an antiquities permit application.

(4) In lieu of a permit application, TxDOT archeological staff shall notify THC in writing (by email or letter) of:

(A) the principal investigator;

(B) the investigation type and scope of work;

(C) the county in which the project will occur;

(D) the project name or identifier (site trinomial, if applicable); and

(E) the period of time for which the permit is desired.

(5) TxDOT staff may initiate work following notification of THC.

(6) THC shall issue a permit number within five business days of receiving the notification.

(7) TxDOT may revise the type of investigation based on observations made during the conduct of work as long as TxDOT provides to THC notification of the change prior to submission of the report.

(8) When conditions of natural disasters, man-made disasters, or post-review discovery necessitate immediate action, TxDOT may initiate work under an emergency permit without having first requested and received the permit number subject to the following conditions:

(A) TxDOT staff shall only conduct work under an emergency permit when archeological deposits are discovered during development or other construction projects or under conditions of natural or man-made disasters that necessitate immediate action to deal with the situation and findings.

(B) TxDOT will provide notification to THC to obtain the permit number within five working days of initiating the work.

(C) All categories of investigations can be authorized under an emergency permit, but an emergency permit will only be issued under emergency conditions where the investigations must be initiated or performed prior to notification under subsection (h) of this section.

(9) THC shall consider the work conducted under the permit completed upon receipt of:

(A) one unbound report;

(B) two tagged pdf format reports on an archival quality CD or DVD, one containing all maps and locational information and one with maps and locational information redacted;

(C) a shape file of the project area subject to investigation; and

(D) a completed abstract form.

(10) The number of defaulted permits accrued by particular TxDOT staff while working for TxDOT shall not affect the issuance of additional permits to other TxDOT staff by THC for TxDOT projects.

(11) The inspection of a project APE or proposed APE for purposes of evaluating the kind of archeological investigation that may be required (scoping) shall not constitute an activity that requires a permit from THC when that activity does not result in a report to be coordinated under the terms of the MOU.

(12) All types of archeological investigations conducted by TxDOT but not covered by this section shall require submission of an antiquities permit application and adhere to the terms of the permit and this chapter.

(k) Surveys for Archeological Resources and Cemeteries.

(1) Surveys may be limited to an evaluation of existing impacts or stratigraphic integrity when these activities are sufficient to determine that any sites present are unlikely to be eligible.

(2) Eligibility determinations that TxDOT performs under this MOU do not require subsurface investigation if it can be demonstrated that the portion of the site to be affected is not likely to have sufficient integrity to be eligible.

(3) For portions of the APE where deposits may retain sufficient integrity for sites to be eligible, TxDOT survey methods will conform with THC's Archeological Survey Standards or with other appropriate methods, except as provided in subsection (h) of this section:

(A) TxDOT reserves the right to depart from published survey standards in cases where it deems appropriate.

(B) THC reserves the right to review non-standard procedures for their adequacy.

(4) Survey methods will be considered adequate for the identification of burials and cemetery boundaries when the portions of the APE within 25 feet of a known cemetery have been investigated and the survey included scraping to a depth adequate to determine whether grave shafts or burials occur in the APE.

(5) A survey to identify burials does not comprise an activity with the potential to cause an adverse effect to a historic property.

(l) Archeological Eligibility Testing Phase.

(1) The following methods will be employed for test excavations:

(A) Mechanical trenches will be excavated and profiles documented in order to characterize the area's potential for archeological deposits with sufficient integrity to be eligible to occur at the site.

(B) The extent of the site within the APE will be sampled through some combination of shovel-testing, column sampling, augering, surface collection, and geophysical prospection in order to characterize the distribution of archeological materials across the site.

(C) Additional units will be excavated and screened to evaluate site areas that appear to have the best potential for yielding important data with good integrity, based on the results of previous work.

(D) The materials analyzed will comprise those materials most likely to contribute important information about prehistory or history.

(E) TxDOT reserves the right to depart from these methods in cases where it deems appropriate and shall justify deviations in the report.

(2) Data from test excavation projects shall be made available to qualified researchers.

(m) Archeological Excavation and Data Recovery.

(1) When appropriate and established in the final research design approved by THC, TxDOT will develop public educational outreach projects for significant data recovery investigations.

(2) Data from data recovery projects shall be made available to qualified researchers.

(n) Exhumation.

(1) Exhumation is a form of investigation to resolve the adverse effects of a project on a cemetery.

(2) Exhumation efforts may be staged as a separate phase of work from burial identification. Following procedures set forth in Texas Health and Safety Code, Chapter 711, exhumation may begin once any required notifications of next of kin or other procedures required by Texas Health and Safety Code, Chapter 711 have been conducted.

(3) The following tasks represent a sufficient, reasonable and good faith effort to identify remains and any next of kin associated with burials in unknown or abandoned cemeteries:

(A) making inquiries through the local County Historical Commission;

(B) posting notices with local news outlets; and

(C) posting notices with local churches.

(4) An exhumation project is itself not a type of investigation that requires an outreach effort or curation of materials at a state-certified facility.

(o) Archeological Sites found after Award of Contract.

(1) When previously unknown archeological remains are encountered after award of a construction contract, TxDOT will immediately suspend construction or any other activities that would affect the site.

(2) TxDOT will inform THC of the discovery of previously unknown archeological remains and invite them to accompany TxDOT staff (or consultants) to the location within ten business days of the discovery.

(3) TxDOT, in consultation with THC, will evaluate the need, if any, for further investigations.

(4) If TxDOT determines that the discovery is an unrecorded archeological site, then TxDOT or its consultants shall complete an electronic TexSite archeological site survey form.

(5) If TxDOT determines that the site does not warrant further investigations because it is not a historic property, construction will resume. TxDOT will document its findings.

(6) If TxDOT determines that the site warrants further investigation because the site may be a historic property, TxDOT will take one of the following three actions, as appropriate:

(A) a permit amendment will be sent to THC for the additional work, if an existing permit for the project is still open;

(B) a notification for a new permit will be sent to THC; or

(C) TxDOT will perform necessary investigations under an emergency permit.

(7) Upon completion of the investigation in accordance with any applicable permit terms, construction may proceed as planned.

(p) Standard Treatments for Particular Resource Types.

(1) Isolated wells or cisterns unassociated with other remains will be treated as follows:

(A) Isolated wells or cisterns that post-date 1900 A.D. do not warrant notification of THC or additional investigation. Removal or sealing of these features does not constitute an adverse effect.

(B) Isolated wells or cisterns that pre-date 1900 A.D. require documentation of their location, construction, and condition. Upon completion of the documentation, these features may be backfilled and capped. These activities do not constitute an adverse effect.

(2) Burnt rock midden features that have not been obviously destroyed by modern disturbances will be treated as follows:

(A) the feature will be trenched to expose a cross-section;

(B) the exposed profiles will be documented, focusing on the identification of any internal structure;

(C) column samples will be taken from the exposed profile in order to collect samples for flotation and dating from each deposit recognized in the profile;

(D) deviations from this standard approach may be undertaken if TxDOT coordinates an alternate approach with THC; and

(E) any additional work on the feature will be determined in consultation between TxDOT and THC, based on the results of the trenching.

(q) Artifact Recovery and Curation.

(1) Artifact recovery.

(A) Artifacts or analysis samples (such as soil samples) that are recovered from survey, testing, or data recovery investigations by TxDOT or their contracted agents that address the research questions must be cleaned, labeled, and processed in preparation for long-term curation unless the artifacts or samples are approved by THC for discard under this chapter and Chapter 29 of this title (relating to Management and Care of Artifacts and Collections).

(B) To ensure proper care and curation, recovery methods must conform to the applicable requirements of this chapter and Chapter 29 of this title.

(2) Artifact curation.

(A) TxDOT or its permitted contractor may temporarily house artifacts and samples during laboratory analysis and research, but upon completion of the analysis, artifacts and accompanying documentation must be transferred to a permanent curatorial facility in accordance with the terms of the antiquities permit.

(B) Artifacts and samples will be placed at an appropriate artifact curatorial repository which fulfills the applicable requirements of Chapter 29 of this title, as approved by THC. When appropriate, TxDOT will consult with THC to identify for disposal collections or portions of collections that do not have identifiable value for future research or public interpretation. Final approval regarding the disposition of collections will be made by THC.

(C) TxDOT is responsible for the curatorial preparation of all artifacts to be submitted for curation so that they are acceptable to the receiving curatorial repository and fulfill the applicable requirements of this chapter and Chapter 29 of this title, as approved by THC.

(r) Documentation for Archeological Resources and Cemeteries.

(1) Projects subject to review for archeological resources and cemeteries under this MOU will be documented by TxDOT in the manner described in this section. Documentation for each such project will include, at a minimum:

(A) a description of the project, defining the APE or the investigated portion of the APE in three dimensions;

(B) a project location map, plotting the project location on 7.5' Series USGS quadrangle maps;

(C) information regarding the setting that is relevant for the assessment of the integrity of any archeological sites within the APE;

(D) information on previously recorded archeological sites in the project location;

(E) description and justification of the level of effort undertaken for the investigation; and

(F) results and recommendations.

(2) All TxDOT survey and testing reports will also include:

(A) description and justification of field methods, including the sampling strategy;

(B) description and quantification of any archeological materials identified;

(C) accurate plotting of any sites found on 7.5' Series USGS quadrangle maps;

(D) submission of electronic TexSite archeological site survey forms to the Texas Archeological Research laboratory; and

(E) recommendations regarding whether any site(s) merit further investigation.

(s) Quarterly Reports for Archeological Resources and Cemeteries. Quarterly reports will be submitted by TxDOT to THC within 60 business days after the end of the calendar quarter, listing all projects for which TxDOT has documented that no historic properties or cemeteries are present in the project's area of potential effect, and those projects that will have no adverse effects on archeological historic properties or cemeteries.

(t) Projects Excluded from Review for Non-Archeological Historic Properties.

(1) For the purposes of this subsection, the term historic properties will refer only to non-archeological historic properties.

(2) Based on previous coordination outcomes, TxDOT and THC agree that the following types of routine roadway projects listed in this paragraph pose limited potential to affect historic properties:

(A) maintenance, repair, installation, or replacement, of transportation-related features, including fencing, signage, traffic signals, railroad warning devices, safety end treatments, cameras and intelligent highway system equipment, bridges, railroad crossings, picnic areas, rest areas, roadside parks, lighting, curbs and gutters, safety barriers, ditches, storm drains, culverts, overpasses, channels, rip rap, and noise barriers;

(B) maintenance, repair, or replacement of roadway surfacing, including crack seal, overlay, milling, grooving, resurfacing, and restriping;

(C) maintenance, repair, reconfiguration, or correction of roadway geometrics, including intersection improvements and driveway and street connections;

(D) maintenance, repair, installation or modification of pedestrian and cycling-related features, including American with Disabilities Act ramps, trails, sidewalks, and bicycle and pedestrian lanes;

(E) maintenance, repair, relocation, addition, or minor widening of roadway, highway, or freeway features, including turn bays, center turn lanes, shoulders, U-turn bays, right turn lanes, travel lanes, interchanges, medians, and ramps;

(F) maintenance, repair, replacement, or relocation of features at crossings of irrigation canals, including bridges, new vehicle crossings, bank reshaping, pipeline and standpipe components, canal conversion to below-grade siphons, and utilities;

(G) repairs needed as a result of an event, natural or man-made, which causes damage to a designated state highway, resulting in an imminent threat to life or property of the traveling public, or which substantially disrupts or may disrupt the orderly flow of traffic and commerce;

(H) design changes for projects that have completed all applicable review and consultation where the new project elements comprise only one or more of the activities listed in this paragraph; and

(I) other kinds of undertakings jointly agreed to in writing by THC and TxDOT as not requiring review.

(3) For projects described in this subsection, TxDOT qualified professional staff shall determine whether additional evaluation is required due to direct effects to historic properties. If no such evaluation is deemed necessary, such projects are determined to pose no effect on historic properties and do not require review by THC under this chapter or under this MOU.

(4) For review-exempt projects, documentation shall be limited to that maintained in TxDOT's official project files. THC may audit TxDOT files for specific projects upon request.

(u) Procedures for Project Coordination when the Project Requires Review for Non-Archeological Historic Properties.

(1) Historic properties. For the purposes of this subsection, the term historic properties will refer only to non-archeological historic properties.

(2) Internal Review Projects. For projects subject to review for historic properties under this MOU, TxDOT qualified professional staff shall determine the presence or absence of historic properties in the area of potential effects. Such efforts should focus on the types of historic properties within public rights-of-way and other sensitive areas, including but not limited to historic bridges, historic road corridors, historic roadside parks and rest areas, historic Depression Era masonry culverts, historic districts, historic courthouse squares and other historic commercial zones. Project activities that TxDOT determines will have no effect or no adverse effect on historic properties may be internally reviewed by TxDOT and are approved for construction. Documentation for such projects will be maintained in official TxDOT project files and regularly reported to THC in accordance with paragraph (4)(A) of this subsection.

(3) Coordinated Projects. Projects subject to review for historic properties under this MOU that are determined by TXDOT qualified professional staff to pose an adverse effect on historic properties shall require individual THC review according to the following procedures:

(A) THC will respond within 20 calendar days of receipt of TxDOT's request for review by indicating whether an affected historic property will require a historic structures permit for an SAL, or whether THC intends to initiate an SAL nomination for the affected property. If THC does not respond within 20 calendar days, TxDOT may assume THC's concurrence with its determinations, and TXDOT may proceed with the project to construction;

(B) in accordance with Government Code §442.008 and §17.2 of this title (relating to Review of Work on County Courthouses), TxDOT will notify THC of any work affecting a county courthouse or its surrounding site, up to and including the curb. THC will respond within 20 calendar days of receipt of TxDOT's notification by indicating whether a historic structures permit for an SAL or additional consultation pursuant to a preservation covenant or easement will be required; and

(C) state-funded projects coordinated under this MOU that may subsequently require a federal permit or change to federal funding, and that involve a direct taking of a historic property, must be individually coordinated with THC in order to satisfy federal regulations under 23 C.F.R. Part 774 and 36 C.F.R. Part 800. Procedures outlined in the 2005 PA-TU or subsequent agreements will govern such coordination.

(4) Documentation. For projects that are internally reviewed or individually coordinated under paragraphs (2) and (3) of this subsection, TxDOT will comply with the following project documentation requirements:

(A) for projects that are internally reviewed under paragraph (2) of this subsection, TxDOT will submit to THC a quarterly report of internally approved projects within 60 business days after the end of the calendar quarter. THC may audit TxDOT files for specific projects submitted in the quarterly report. Quarterly report documentation will include:

(i) project description and scope;

(ii) project location map with delineation of the APE and location of historic properties;

(iii) methodology used to identify historic properties;

(iv) photographic and descriptive information for each identified property;

(v) description of public involvement activities;

(vi) justification for findings of historic properties, including setting, integrity, and contextual information; and

(vii) justification of effects on historic properties, including evaluations, reports, and other information relevant to the findings by TxDOT; and

(B) for projects that are individually coordinated under paragraph (3) of this subsection, documentation submitted to THC will include the items listed in subparagraph (A) of this paragraph, and a description of efforts to avoid or minimize harm, mitigation, and commitments.

(v) Denial of Access. In cases where access to private land for conducting investigations is denied prior to the approval of the environmental review document, TxDOT will make a commitment to complete appropriate investigations once access is obtained, but prior to any construction related impacts.

(w) MOU to Govern TxDOT Procedures. TxDOT satisfies applicable THC requirements if it utilizes the procedures of this MOU in lieu of other THC procedures. In cases where TxDOT is utilizing this MOU in lieu of other THC procedures, TxDOT must follow the requirements of this MOU.

(x) Project-Specific Agreements. Any project-specific agreements reached between TxDOT and THC regarding the evaluation or treatment of project effects shall be honored by both parties and shall supersede the requirements of this MOU. TxDOT and THC may deviate from the terms of the agreement only when both parties concur that the agreement requires revision.

(y) Continuous Improvement Agreement. TxDOT and THC agree to collaborate on improvements to their programs and development of innovative solutions for expedited review procedures. Such mechanisms may include using project outcomes to refine approaches to resource identification, evaluation, treatment methods, programmatic mitigation measures and interagency agreements that facilitate early coordination, and streamlining and expedited review of TxDOT's transportation projects.

(z) THC Review of TxDOT Project Files. THC may review TxDOT project files for specific undertakings carried out under this MOU. THC may recommend process improvements based on issues identified during the review.

(aa) Dispute Resolution. THC and TxDOT staff will be responsible for attempting to resolve any conflict between THC and TxDOT that results from the implementation of this section before elevating to agency management.

(bb) Review of MOU. This MOU shall be reviewed and updated as provided by law or by agreement between the parties. THC and TxDOT agree to convene every four years to review, update, or extend this agreement.

§26.26. Memorandum of Understanding with Texas Water Development Board.

(a) Introduction.

(1) Whereas, the Texas Water Development Board (TWDB) and the Texas Historical Commission (THC) desire to enter into a memorandum of understanding (MOU) to help define how the TWDB will ensure projects funded by the TWDB receive appropriate consideration of potential impacts to all types of archeological sites, historic structures and cemeteries under the Antiquities Code of Texas (Texas Natural Resources Code Chapter 191); and

(2) Whereas, under the provisions of Texas Water Code §6.104, TWDB may enter into a MOU with any other state agency and shall adopt by rule any MOU between TWDB and any other state agency; and

(3) Whereas, under the provisions of Texas Government Code Chapter 442, the THC is charged with the responsibility for the protection and preservation of the archeological and historical resources of Texas; and

(4) Whereas, under the provisions of the Texas Health and Safety Code Chapter 711, the THC has a number of specified roles, including the removal of burials from unknown or abandoned cemeteries; and

(5) Whereas, under the provisions of Texas Natural Resources Code §§191.051, 191.053, and 191.054, THC may contract with or issue permits to other state agencies for the discovery and scientific investigation of archeological deposits;

(6) Now, therefore, the TWDB and the THC agree to enter into this MOU regarding appropriate review of potential impacts to all types of archeological sites, historic structures or cemeteries for all projects to be constructed with financial assistance from the TWDB.

(b) Pre-construction Phase Responsibilities. In compliance with this chapter, TWDB will ensure that applicants for financial assistance provide the TWDB with documentation of appropriate coordination with the THC during the project planning phase for review of potential impacts to cultural resources on lands belonging to or controlled by any county, city, or other political subdivision of the State of Texas that may be impacted by proposed development projects funded in whole or in part by TWDB.

(1) Certain categories of projects funded by the TWDB, as defined under 31 TAC Chapter 371, Subchapter E; 31 TAC Chapter 375, Subchapter E; and 31 TAC §363.14, may be excluded from the formal environmental review requirements when proposed project scope or construction methods will not have any adverse impacts to the human environment, including cultural resources, such as rehabilitation or direct functional replacement of existing pipelines, pump station equipment, storage tanks, or treatment facility equipment. Such categories may include:

(A) State Funded Programs: a Determination of No Effect; or

(B) Federal Equivalency Programs: a Categorical Exclusion.

(C) TWDB will send THC the documents in this subsection as notification that the project has been excluded from formal environmental review and may not require THC review. The THC will not need to respond to Categorical Exclusions or Determinations of No Effect.

(2) For projects not eligible to receive a Categorical Exclusion or a Determination of No Effect, or for projects that may be excluded from formal environmental review once concerns about potential impacts have been adequately addressed, a TWDB applicant, or its consultants, may coordinate with THC to seek recommendations regarding the need for field investigations or to seek concurrence with a determination that the project may proceed without further investigations.

(A) For projects requiring field investigations, the TWDB applicant, or its consultants, will proceed as directed by the THC in a manner consistent with the Antiquities Code of Texas and the Archeological Survey Standards for Texas.

(B) The TWDB will not approve reports required under a Texas Antiquities permit or make recommendations regarding scope of work to the THC.

(3) For projects requiring coordination with the THC, the TWDB will not release funds for the design or construction phases of a project until written approval that a project may proceed has been received from the THC.

(c) Construction Phase Responsibilities. The TWDB will condition all financial assistance, consistent with §26.7 of this title (relating to Location and Discovery of Cultural Resources and Landmarks), that if an archeological site is discovered during project construction:

(1) work will cease in the area of the discovery;

(2) the site will be protected; and

(3) the discovery will be reported immediately to the THC.

(4) As necessary, the TWDB will condition financial assistance to include THC recommendations for measures intended to ensure avoidance, minimization, or mitigation of potential impacts to cultural resources, such as construction monitoring by a qualified archaeologist.

(d) Term. This MOU will remain in full force and effect for the period of four years or until canceled by the written notice of either party. The MOU may be amended by mutual written agreement between the TWDB and the THC.

(e) Review. This MOU shall be reviewed and updated as provided by law or by agreement between the parties. THC and TWDB agree to convene every four years to review, update, or extend this agreement.

§26.27. Memorandum of Understanding with Texas Parks and Wildlife Department.

(a) Introduction. It is the public policy and in the interest of the State of Texas to locate, protect, and preserve archeological sites and historic properties situated on public lands. Furthermore, it is in the public interest to enter into agreements to provide for timely and efficient construction of transportation facilities, reservoirs, public buildings, parks, and infrastructure. Memoranda of Understanding (MOU) and Memoranda of Agreement (MOA) are formal agreements which provide for the preservation of environment and cultural resources; wise, productive use of the cultural and natural resources; good stewardship of publicly owned landmarks; and protection of public and private investment in historic preservation.

(b) Primary Considerations and Stipulations. All agreements are subject to this chapter. Primary considerations in the development of permit specific memoranda shall include the significance of the cultural resource(s), and the nature of the impact of the project on the cultural resource(s). The memoranda will stipulate basic information related to the data recovery program for each permitted project, including, but not limited to: the significance of the area to be excavated; the methods and techniques to be employed; the coordination of the excavation with project construction schedules; and the estimated budget for all phases of work related to the investigation, including artifact analysis and report production. Memoranda of Understanding

between the Texas Historical Commission (THC) and the Texas Parks and Wildlife Department (TPWD) follow.

(c) TPWD will comply with the provisions of this section. For the purpose of this section, "TPWD lands" means lands owned or under the control of TPWD.

(1) General Provisions.

(A) TPWD shall:

(i) require that all archeological investigations on TPWD lands are conducted under Antiquities Permits obtained by persons who meet THC requirements for principal investigator as listed in §26.4 of this title (relating to Professional Qualifications and Requirements);

(ii) notify the THC of pending construction and maintenance projects in accordance with all applicable provisions of this section;

(iii) perform and report on construction monitoring, archeological surface reconnaissance, and intensive cultural resource surveys on TPWD lands, in accordance with all applicable provisions of this section; and

(iv) notify THC when cultural resources are discovered on TPWD lands.

(B) THC will issue an annual Antiquities Permit for investigations on TPWD lands to the TPWD Cultural Resources Program Director by January 15th of each year that this MOU is in effect, upon a finding by THC of successful completion by TPWD of the annual Antiquities Permit issued two years before that date.

(C) This MOU may be revised and amended upon the agreement of TPWD and THC.

(2) THC Archeological Review of Proposed Projects on TPWD Lands.

(A) Projects reviewed by THC. Construction or maintenance projects on TPWD lands that impact the ground surface or subsurface shall be submitted for THC review prior to project inception, when the project:

(i) impacts a total or cumulative area of potential effect greater than five acres and involves construction or maintenance activities in areas where similar activities have not occurred before;

(ii) consists of disking, plowing, or other periodic activities impacting a total or cumulative area of potential effect greater than 120 acres, even if similar activities have occurred in that area before;

(iii) is new or replacement fence construction that involves new fence line roads, fire lanes, bulldozing, or other ground-disturbing activities aside from post holes;

(iv) is grading or maintenance of a road or fire break when the road or fire break, water diversion features, and/or its ditches will be lengthened, widened, or deepened beyond previous disturbance from construction and/or maintenance;

(v) involves activities related to prescription burning of any kind that disturb the ground surface or subsurface in areas larger than 10 acres where similar activities have not occurred before; or

(vi) is any type of project not described in subparagraph (B) of this paragraph.

(B) Projects not reviewed by THC. Construction or maintenance projects on TPWD lands that result in no impact to the ground surface or subsurface will not be reviewed by THC prior to project inception. In addition, construction or maintenance projects on TPWD lands that result in impact to the ground surface or subsurface will not be reviewed by THC prior to project inception when the project:

(i) impacts a total or cumulative area of potential effect of five acres or less;

(ii) consists of disking, plowing, or other periodic activities impacting a total or cumulative area of potential effect of less than 120 acres where similar activities have occurred before;

(iii) is new or replacement fence construction that does not involve new fence line roads, fire lanes, bulldozing, or other ground disturbing activities aside from post holes;

(iv) is grading, disking, or other maintenance of a road or fire break when the road or fire break, related water diversion features, and/or its ditches will not be lengthened, widened, or deepened beyond previous disturbance from construction and/or maintenance; or

(v) is prescription burning or hand clearing of any kind that does not disturb the ground surface, historic structures, and/or rock art.

(C) Prior THC approval of ground-disturbing projects. Projects that involve continuing impacts of the same nature and extent approved by THC need not be reviewed again if no archeological sites have been recorded within those project areas. THC will review continuing impacts of the same nature and extent in areas where archeological sites are present at 10 year intervals from the original date of approval to proceed.

(D) TPWD review of projects. TPWD will review all projects that have the potential to impact cultural resources. Notwithstanding the provisions of this subparagraph, TPWD may elect to initiate archeological investigations when proposed projects have the potential to impact cultural resources, on the recommendation of the Cultural Resources Program Director.

(E) TPWD will provide cultural resources training to State Parks and Wildlife Management Area personnel. On the direction of the Cultural Resources Program Director (CRPD), Wildlife Facilities Coordinator (WFC), or their designees, TPWD personnel who have received cultural resources training within the past 5 years may observe construction and maintenance activities, to ensure that cultural resources are considered during TPWD activities. If any archeological sites are revealed by such activities, TPWD personnel will report them to the CRPD, WFC, or their designees.

(3) Procedures for Proposed Projects.

(A) Notification to THC of proposed projects. TPWD shall send THC written notification no less than 30 days in advance of proposed projects that require review under paragraph (2)(A) of this subsection, and/or §106 of the National Historic Preservation Act (16 U.S.C. §470f). In rare cases when a response from THC is needed in less than 30 days, notification may be made by telephone or electronic mail, with a written notification to follow. Project review requests concerning Wildlife Management Areas shall be directed to THC through the WFC or their designee, and project review requests concerning State Parks and other TPWD properties shall be directed to THC through the CRPD or their designee. Each notification must include information on:

(i) the type of project that is proposed, including the nature and extent of its impacts;

(ii) any prior impacts that have affected the project area;

(iii) the project location plotted on a copy of a USGS 7.5' topographic quadrangle map, showing any known archeological sites in the vicinity; and

(iv) any known archeological sites and/or archeological investigations within the proposed project area.

(B) THC response to project review requests. THC shall respond in writing to each project review request within 30 days of its receipt. Archeological investigations may be deemed necessary by THC as a result of this review. If THC does not respond to TPWD within that period of time, TPWD may proceed with internal authorization of the proposed project without further notice to THC.

(C) THC approval of proposed projects. When THC concurs with a finding of a qualified TPWD archeologist or archeologist contracted by TPWD that no archeological sites are located in a proposed construction area or that a proposed project will not adversely impact cultural resources, TPWD may proceed with the project on receipt of written concurrence from THC.

(D) Archeological site evaluation. When a qualified TPWD archeologist or archeologist contracted by TPWD identifies an archeological site or sites in a proposed project area, he or she will evaluate whether each site appears to merit official State Antiquities Landmark designation under §26.10 of this title (relating to Criteria for Evaluating Archeological Sites).

(E) Protection of significant sites. If adverse impacts to an archeological site(s) can be avoided during construction, the archeologist will mark the site in the field and TPWD personnel will not damage that area. If TPWD conducts vegetation clearing on significant archeological sites, it shall be done by hand to avoid damage to the site. On-site decisions made by TPWD archeologists regarding protective measures for archeological sites will be respected by TPWD employees and contractors, and will balance the need to conserve significant sites with timely project completion.

(F) Mitigation of impacts to significant sites. If an archeological site that merits official State Antiquities Landmark designation would be adversely impacted by a proposed project, TPWD will propose mitigation measures and request THC consultation and recommendations. If TPWD or THC ascertains that further investigations are necessary prior to or during a construction or maintenance project, these investigations must be performed before the project may proceed.

(G) Archeological site discovery. Whenever cultural resources are discovered on TPWD lands, they will be reported to the CRPD, WFC, or their designees, who will report this information to THC and maintain central repositories of cultural resource information.

(4) THC Review and Coordination of Third Party Projects on TPWD Lands.

(A) TPWD will ensure that archeological investigations conducted on TPWD lands on behalf of other entities promote the identification and conservation of cultural resources.

(B) TPWD will require principal investigators conducting archeological investigations on TPWD lands on behalf of third parties to obtain individual Antiquities Permits for those investigations.

(C) THC will notify TPWD if they should become aware of proposed archeological investigations on lands that TPWD manages, but are owned by another entity, and/or that are sponsored by an entity other than TPWD.

(D) THC shall issue Antiquities Permits to entities conducting archeological investigations on TPWD lands on behalf of third parties, only after receiving written notice that TPWD has approved the research designs, scopes, methods, and reporting requirements for those permits, and the CRPD, WFC, or their designee has signed the Landowner's Certification on those permit applications.

(E) THC will notify TPWD prior to granting permit extensions.

(F) TPWD will require that background research for archeological projects on TPWD lands is conducted at the TPWD Archeology Laboratory in Austin prior to the field investigations, unless otherwise stipulated.

(G) TPWD will review all reports or sections of reports for archeological investigations on TPWD lands, regardless of whether those projects extend beyond TPWD boundaries. The CRPD, WFC, or their designee will provide written comments on draft reports within 30 days to the principal investigator, and principal investigators shall provide revised draft reports to TPWD in which TPWD comments are addressed. After TPWD concurs that those comments have been addressed, TPWD will submit reports to THC for review, under a cover letter from the CRPD, WFC, or their designee notifying THC that those draft reports have been reviewed and approved by TPWD.

(5) Scope of TPWD Annual Antiquities Permit Archeological Investigations.

(A) Archeological investigations. The annual permit authorizes construction monitoring, surface reconnaissance, excavation of shovel tests less than 1 by 1 meter in horizontal dimension, mechanical auger testing, rock art recording and conservation, and intensive cultural resource surveys of TPWD lands up to 200 acres per project conducted during that calendar year.

(i) Reconnaissance surveys as defined in §26.15 of this title (relating to Archeological Permit Categories) conducted under the annual permit may exceed 200 acres per project.

(ii) Up to five backhoe or other mechanical trench excavations may be used during survey-level investigations to determine whether buried cultural deposits exist, and to obtain geoarcheological (geomorphological) data.

(iii) The following investigations are not authorized under this permit. Intensive surveys covering over 200 acres and/or advanced archeological investigations such as testing or data recovery as defined in §26.15 of this title (relating to Archeological Permit Categories) will not be conducted under this permit. Architectural investigations are not authorized under this permit.

(B) Qualifications. Investigations will be conducted under the supervision of qualified TPWD archeologists or, at the discretion of the CRPD, archeologists contracted by TPWD who meet THC requirements for principal investigator as listed in §26.4 of this title. The CRPD, WFC, or their designees may designate qualified TPWD archeologists to serve as Principal Investigators for particular projects.

(C) Standards. All archeological investigations performed on TPWD lands must meet archeological standards as described in §26.4 of this title.

(6) THC Review of Reports on Archeological Investigations under annual Antiquities Permit.

(A) Archeological investigations conducted on TPWD lands under the annual Antiquities Permit that require THC review under paragraph (2)(A) of this subsection or other state or federal regulations will be reported in the annual Antiquities Permit report. At the discretion of the CRPD, additional investigations that do not require THC review may be included in the annual Antiquities Permit report, and will be clearly designated as such.

(B) Interim reports. When TPWD seeks project approval from THC as a result of archeological investigations conducted on TPWD lands under the annual Antiquities Permit, the CRPD, WFC, or their designees may send THC a concise interim report on the findings of the investigations. The interim report will contain information on:

(i) the type of project that is proposed, including the nature and extent of its impacts;

(ii) any prior impacts that have affected the project area;

(iii) the project location plotted on a copy of a USGS 7.5' topographic quadrangle, showing the area of archeological investigations and any archeological sites encountered;

(iv) a summary of the scope, findings, and conclusions of the archeological investigations;

(v) evaluations of each archeological site's suitability for official State Antiquities Landmark designation under §26.10 of this title (relating to Criteria for Evaluating Archeological Sites); and

(vi) a project approval request or recommendations for further work, as appropriate.

(C) THC review of interim reports. THC shall respond in writing to interim reports within 30 days of receipt. When appropriate, THC will concur with the report findings and recommendations after review. If THC does not respond to TPWD within that period of time, TPWD may proceed with internal authorization of the proposed project without further notice to THC.

(D) Draft reports. TPWD archeologists and archeologists contracted by TPWD who conduct investigations under the annual Antiquities Permit at the discretion of the CRPD shall provide the CRPD with concise, informative draft reports with supporting documents. All interim reports described in subparagraph (B) of this paragraph will be expanded into draft reports meeting the requirements of the Council of Texas Archeologists Guidelines for Cultural Resources Management Short Reports. The archeologist will submit shapefiles of areas investigated and copies of TexSite forms for the sites described in the report to the CRPD along with each draft report. All sites shall have trinomial designations assigned by the Texas Archeological Research Laboratory, The University of Texas at Austin.

(E) Draft annual Antiquities Permit report. The TPWD draft annual Antiquities Permit report on each year's investigations will be compiled and edited by the CRPD, who will submit the report to THC for review by May 1 of the following year. THC shall provide comments in writing on the draft annual report within 30 days of receipt. If THC does not respond to TPWD within that period of time, TPWD may proceed with publication of the final annual report without further notice to THC.

(F) Final annual Antiquities Permit report. The final TPWD annual Antiquities Permit report shall be in a format that conforms to §26.16(a)(1) of this title (relating to Reports Relating to Archeological Permits). Upon approval of the draft annual Antiquities Permit report by THC, TPWD will submit the final report to THC no later than 120 days after TPWD has received THC approval, and will distribute copies in accord with §26.16 of this title.

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 February 15, 2013.

TRD-201300650
Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 463-1858

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes new §25.133, relating to Advanced Metering System Customer Options, and amendment to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities (Tariff for Retail Delivery Service). The proposed sections would require a transmission and distribution utility (TDU) with an advance metering system (AMS) deployment plan to create a service in which a customer may choose to have electric service metered through a non-communicating meter. The proposed sections would also require the TDU to charge participants for the costs associated with the service. The section is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 41111 is assigned to this proceeding.

Christine Wright, Senior Policy Analyst, Infrastructure and Reliability Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed sections.

Ms. Wright has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the proposed sections will be the creation of a program in which a customer may choose to have electric service metered through a non-communicating meter. There will be economic costs to a TDU subject to the proposed sections. However, the proposed sections require the TDU to charge program participants for the cost of the program. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed sections. Therefore, no regulatory flexibility analysis is required.

Ms. Wright has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment

impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, beginning at 9:30 a.m. on April 19, 2013 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received by April 1, 2013.

Initial comments on the proposed sections may be submitted by April 1, 2013, and reply comments may be submitted by April 15, 2013. Sixteen copies of comments on the proposed sections are required to be filed pursuant to §22.71(c) of this title with the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Comments should be organized in a manner consistent with the organization of the proposed sections. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the proposed sections. All comments should refer to Project Number 41111.

The commission also solicits comments on the following:

(1) Are there any circumstances, such as premises where an advanced meter has not been deployed, where a customer should not have to pay the one-time fee or should pay a reduced one-time fee under proposed subsection (e)?

(2) For the recurring monthly fee for AMS Alternative Service under section 6.1.2.1 of the Tariff for Retail Delivery Service, should the fee be prorated so that the customer pays for the portion of the first month in which service under the AMS Alternative Service is provided and for the portion of the last month in which service under the AMS Alternative Service is provided?

(3) Should the transmission and distribution utility (TDU), rather than the retail electric provider (REP), be primarily responsible for interacting with a customer concerning service using a non-transmitting meter, including providing the notification required by proposed §25.133(c)(1)(A), obtaining the acknowledgement required by proposed §25.133(c)(1)(B), and informing the customer of the access requirements described in proposed §25.133(d)(3)?

SUBCHAPTER F. METERING

16 TAC §25.133

The new section is proposed under the PURA, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §14.001, 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 designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §32.101, which requires an electric utility to file its tariff with each regulatory authority; §36.003, which requires that each rate be just and reasonable and not unreasonably preferential, prejudicial, or discriminatory; §38.001, which requires an electric utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; and PURA §39.107(h), which requires the commission to establish a nonbypassable surcharge for an electric utility or transmission and distribution to use to recover reasonable and necessary costs incurred in deploying advanced metering and meter information networks to residential customers and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 32.101, 36.003, 38.001, and 39.107(h).

§25.133. Advanced Metering System Customer Options.

(a) Purpose. This section allows a customer to choose to receive electric service through a non-transmitting meter and authorizes a transmission and distribution utility (TDU) to assess fees to recover the costs associated with this section from customers who elect such a meter.

(b) Definitions. As used in this section, the following terms have the following meanings, unless the context indicates otherwise:

(1) Advanced meter--As defined in §25.130 of this title (relating to Advanced Metering).

(2) Non-transmitting meter--A meter that does not transmit meter data or otherwise communicate through radio frequencies. A TDU shall provide non-standard metering through the disabling of communications technology in an advanced meter. If a TDU cannot feasibly disable the communications technology in its advanced meters, the TDU shall provide non-standard metering through another reasonable method.

(c) Participation. A customer may request a non-transmitting meter by contacting the customer's retail electric provider (REP).

(1) A REP shall take the following actions if its customer expresses interest in a non-transmitting meter.

(A) The REP shall notify the customer of the following.

(i) The customer will be required to pay the costs associated with the activation of the non-transmitting meter and the ongoing costs associated with the manual reading of the meter, and other fees and costs that may be assessed by the TDU associated with the non-transmitting meter;

(ii) The customer may be required to wait up to 45 days to switch the customer's REP, and may experience longer restoration times in case of a service interruption or outage; and

(iii) If the customer is currently enrolled in a product or service requiring an advanced meter as a condition of enrollment, the REP shall also notify the customer that a different product or service must be chosen prior to installation of the non-transmitting meter.

(B) If the customer chooses the non-transmitting meter, the REP shall obtain written acknowledgement of the conditions listed in subparagraph (A) of this paragraph. The REP shall notify the TDU of the customer's choice of a non-transmitting meter upon receipt of the written acknowledgement.

(2) A customer who has elected a non-transmitting meter may rescind the choice at any time by notifying the customer's REP. The customer shall remain responsible for all costs related to the selection of the non-transmitting meter until the TDU restores normal metering service.

(d) TDU installation and meter-reading obligations.

(1) Within thirty (30) days of notification by the customer's REP, the TDU shall activate or otherwise provide for a non-transmitting meter at the customer's premises.

(2) When a customer who is served using a non-transmitting meter vacates the premises, the TDU shall install or activate an advanced meter at the premises.

(3) A TDU shall read a non-transmitting meter at least monthly. In order for the TDU to maintain a non-transmitting meter at the customer's premises, the customer must provide the TDU with sufficient access to properly operate and maintain the meter, including reading and testing the meter.

(e) Cost recovery. Costs incurred by a TDU to implement this section shall be borne only by each customer who chooses to receive service using a non-transmitting meter. Not later than fifteen (15) days after the effective date of this section, each TDU shall file a compliance tariff to establish a one-time fee for the costs to initiate and ultimately discontinue service using a non-transmitting meter. In addition, the compliance tariff shall include a recurring monthly fee to recover the ongoing costs associated with providing service using a non-transmitting meter, including costs associated with meter reading and billing.

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 February 14, 2013.

TRD-201300620
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 936-7223

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SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION
DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.214

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 16 TAC §25.214(d) is not included in the print version of the Texas Register. The figure is available in the on-line version of the March 1, 2013, issue of the Texas Register.)

The amendment is proposed under the PURA, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §14.001, 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 designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §32.101, which requires an electric utility to file its tariff with each regulatory authority; §36.003, which requires that each rate be just and reasonable and not unreasonably preferential, prejudicial, or discriminatory; §38.001, which requires an electric utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; and PURA §39.107(h), which requires the commission to establish a non-bypassable surcharge for an electric utility or transmission and distribution to use to recover reasonable and necessary costs incurred in deploying advanced metering and meter information networks to residential customers and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 32.101, 36.003, 38.001, and 39.107(h).

§25.214. Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.

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

(d) Pro-forma Retail Delivery Tariff. Tariff for Retail Delivery Service.
Figure: 16 TAC §25.214(d)

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 February 14, 2013.

TRD-201300619
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 137. COMPLIANCE AND PROFESSIONALISM
SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.5

The Texas Board of Professional Engineers (Board) proposes amendments to §137.5, regarding Notification of Name Change, Address Change, Employment Change, and Criminal Convictions.

The proposed amendment to §137.5 changes the title to a shorter all-inclusive title and adds a requirement that the license holder notify the board within 30 days of when they are sanctioned by another state's engineering licensing board.

C.W. Clark, P.E., Director of Compliance and Enforcement for the Board, has determined that for the first five-year period the proposed amendments are in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the sections as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not

needed because there is no adverse economic effect to small or micro businesses.

Mr. Clark also has determined that for the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments is an increase in compliance with the Board's rules.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to C.W. Clark, P.E., Director of Compliance and Enforcement, Texas Board of Professional Engineers, 1917 South IH-35, Austin, Texas 78741, faxed to his attention at (512) 440-5715, or sent by email to rules@engineers.texas.gov.

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state, and §1001.207, standards of conduct and ethics.

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

§137.5. License Holder Notification Requirements [of ~~Name Change, Address Change, Employment Change, and Criminal Convictions~~].

(a) - (b) (No change.)

(c) Each license holder shall notify the board in writing not later than 30 days after a misdemeanor or felony criminal conviction, or any sanction is imposed against a licensee by another state's engineering licensing board.

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 February 15, 2013.

TRD-201300656
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 440-7723

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.5

The Texas Optometry Board proposes amendments to §273.5 to clarify the limitations on the participation of optometry students in clinical training. With the opening of a new optometry school in Texas, the agency has determined that this is the appropriate time to set guidelines for students and faculty of optometry schools as to time, place and supervision required for clinical instruction and practice.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the amendments.

Mr. Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that students and faculty of optometry schools will confine clinical instruction and practice to the appropriate settings and supervision.

It is anticipated that there will be no economic costs for students and faculty, those persons subject to the restrictions of the rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The agency licenses approximately 4,000 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The agency does not license these practices. There are no anticipated costs because of the amendments for those persons required to comply with the rule.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register.*

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.260. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.260 as defining parameters of clinical training.

§273.5. Clinical Instruction and Practice - Limited License for Clinical Faculty.

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

(g) A student currently enrolled in an approved in-state college of optometry may participate in clinical instruction and practice, provided that:

(1) The clinical instruction and practice is conducted on the premises of an approved in-state college of optometry, or the college's affiliated clinics, under the instruction and supervision of a licensed optometrist or physician employed by the college of optometry, or

(2) The clinical instruction and practice is conducted as an externship in the office of a licensed optometrist or physician appointed as a clinical instructor by an approved in-state college of optometry. The clinical training must be under the instruction and supervision of the appointed clinical instructor.

(h) No provision of this rule is intended to remove an exemption provided by statute.

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 February 12, 2013.

TRD-201300588
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 305-8502

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER G. MANDATORY CONTINUING EDUCATION

22 TAC §535.75

The Texas Real Estate Commission (TREC) proposes an amendment to §535.75, concerning Education Standards Advisory Committee. The amendment changes the expiration date for the term of appointments and expands the term officers serve to two years.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated significant impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendment.

Ms. DeHay also 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 the section will be effective leadership and committee continuity.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.75 Education Standards Advisory Committee.

(a) - (d) (No change.)

(e) Members of the committee serve two-year terms, expiring on December 31 [~~February 1~~] of each even-numbered year. A member may serve up to three consecutive terms on the committee, and may be reappointed after a break in service of at least two years. A member whose term has expired holds office until the member's successor is appointed. If a vacancy occurs during a member's term, the commission shall appoint a person to fill the unexpired term.

(f) At a regular meeting in January [~~May~~] of each odd-numbered year, the committee shall elect from its members a presiding officer, assistant presiding officer, and secretary.

(g) - (o) (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 February 14, 2013.

TRD-201300621
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 936-3092

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SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §535.144

The Texas Real Estate Commission proposes amendments to §535.144, concerning When Acquiring or Disposing of Own Property or Property of Spouse, Parent or Child. The amendments to §535.144 streamline the rule for clarity and provide a definition of "license holder" for purposes of the section to include the license holder's spouse, which is in the existing rule; a business entity in which the licensee is more than a 10% owner, which is in the existing rule; and a trust of which the licensee is the trustee or of which the licensee or the licensee's spouse, parent or child is a beneficiary. The trust provisions are proposed to clarify that the commission has jurisdiction under §1101.652(a)(3) of the Act over transactions in which licensees act on behalf of trusts in which they or family members have an interest. Family trusts, which are the types of trusts most often encountered in residential transactions, are typically used to hold title or ownership to real estate and other assets as an alternative to probate.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated significant impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendment.

Ms. DeHay also 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 the section will be clarification

of the agency's jurisdiction over a licensee engaging in real estate transactions on behalf of a buying or selling entity in which the licensee has an ownership or beneficial interest.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.144. When Acquiring or Disposing of Own Property or Property of Spouse, Parent or Child.

(a) For purposes of §1101.652(a)(3) of the Act:

(1) "a person related to the license holder within the first degree by consanguinity" means a license holder's parent or child; and[~~.~~]

(2) "license holder" includes a licensee acting on behalf of:

(A) the license holder's spouse;

(B) a business entity in which the licensee is more than a 10% owner; or

(C) a trust for which the licensee acts as trustee or of which the licensee or the licensee's spouse, parent or child is a beneficiary.

(b) A license holder [~~licensee, when~~] engaging in a real estate transaction on his or her own behalf or in a capacity defined in subsection (a) of this section, [~~on behalf of a business entity in which the licensee is more than a 10% owner, or on behalf of the licensee's spouse, parent, or child,~~] is obligated to disclose in writing [~~to any person with whom the licensee deals~~] that he or she is a licensed real estate broker or salesperson [~~acting on his or her own behalf or on behalf of the licensee's spouse, parent or child~~] in any contract of sale or rental agreement or in any other writing given prior to entering into any contract of sale or rental agreement.

(c) A license holder acting on his or her own behalf or in a capacity described under subsection (a) of this section or §1101.652(a)(3) of the Act [~~licensee~~] shall not use the license holder's [~~licensee's~~] expertise to the disadvantage of a person with whom the license holder [~~licensee~~] deals.

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 February 14, 2013.

TRD-201300622
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 936-3092

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.206

The Texas Real Estate Commission (TREC) proposes amendments to §535.206, concerning the Texas Real Estate Inspector Committee. The amendments are proposed to reduce the term served by public members of the committee from six years to two years. There are no term limits in the rule as proposed; therefore, members could serve for additional terms if reappointed by the Commission. The proposed rule has been recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC (Committee).

Kerri T. Galvin, Deputy General Counsel, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendment.

Ms. Galvin also 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 the amended rule will be increased ability to attract and retain public members on the Committee.

Comments on the proposal may be submitted to Kerri T. Galvin, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce all rules necessary to administer Chapter 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed rule.

§535.206. The Texas Real Estate Inspector Committee.

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

(d) Inspector members [~~Members~~] of the committee serve staggered six-year terms, with the terms of two inspector members [~~and one public member~~] expiring on February 1 of each odd-numbered year. Public members of the committee serve staggered two year terms, with the term of one public member expiring on February 1 of each even-numbered year and the terms of two public members expiring on February 1 of each odd-numbered year. Initial appointments may be made for terms shorter than six or two years, respectively, in order to establish staggered terms. A member whose term has expired holds office until the member's successor is appointed. If a vacancy occurs during a member's term, the commission shall appoint a person to fill the unexpired term.

(e) - (n) (No change.)

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

Filed with the Office of the Secretary of State on February 14, 2013.

TRD-201300623
Kerri T. Galvin
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 936-3092

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22 TAC §535.223

The Texas Real Estate Commission (TREC) proposes amendments to §535.223, concerning Standard Inspection Report Form. The amendments were previously proposed and published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9278) but were withdrawn on February 12, 2013, and are now being re-proposed. The amendments are proposed to track revisions to the inspector standards of practice as re-proposed under separate rule. The amendments also clarify how the form is to be used by an inspector and in what ways an inspector is authorized to modify the form. The amendments provide an additional exemption for inspectors conducting inspections on single component systems, which are defined by the rule. The amendments adopt by reference a new Property Inspection Form (REI 7-3) and removes the requirements for the two current forms, REI 7A1 and REI 7-2.

The proposed rule has been recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC, to correspond to proposed revisions to the inspector standards of practice that are also proposed and explained in this issue of the *Texas Register.*

Kerri T. Galvin, Deputy General Counsel, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There may be a small cost to some licensees who may have to purchase upgrades to inspection report software, but this minimal cost is outweighed by the benefit to the public.

Ms. Galvin also 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 the amended rule will be increased clarity for inspectors and consumers alike regarding the use of the standard inspection report form.

Comments on the proposal may be submitted to Kerri T. Galvin, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed rule.

§535.223. Standard Inspection Report Form.

The Texas Real Estate Commission adopts by reference Property Inspection Report Form REI 7-3 and [~~REI 7A-1~~], approved by the Commission [~~in 2008, and Property Inspection Report Form REI 7-2 approved by the Commission in 2009,~~] for use in reporting inspections results. This document is [~~These documents are~~] published by and available from the Texas Real Estate Commission website: www.trec.texas.gov, or by writing to the Commission at Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of substantially complete one-to-four family residential property shall be reported on Form REI 7-3 [~~Form REI 7A-1 or Form REI 7-2~~] adopted by the Commission ("the standard form").

(2) Inspectors may reproduce the standard form by computer or from printed copies obtained from the Commission. Except as specifically permitted by this section, the inspector shall reproduce the text of the standard form verbatim and the spacing, [~~length of blanks,~~] borders and placement of text on the page must appear to be identical to that in the printed version of the standard form.

(3) An inspector may make the following changes to the standard form:

(A) [~~the inspector may~~] delete the line for name and[~~,~~] license number, [~~and signature~~] of the sponsoring inspector, if the inspection was performed solely by a professional inspector;

(B) [~~the inspector may~~] change the typeface; provided that they [~~fonts~~] are no smaller than a 10 point font [~~those used in the printed version of the standard form~~];

(C) change the color of the typeface and checkboxes;

(D) [~~(C)~~] [~~the inspector may~~] use legal sized (8-1/2" by 14") paper;

(E) [~~(D)~~] [~~the inspector may~~] add a cover page to the report form;

(F) [~~(E)~~] [~~the inspector may~~] add footers to each page of the report except the first page and may add headers to each page of the report;

(G) [~~(F)~~] [~~the inspector may~~] place the property identification and page number at either the top or bottom of the page;

(H) [~~(G)~~] [~~the inspector may~~] add subheadings under items, provided that the numbering of the standard items remains consistent with the standard form;

(I) [~~(H)~~] [~~the inspector may~~] list other items in the corresponding [~~appropriate~~] section of the report form and additional captions, letters, and check boxes for those items;

(J) [~~(I)~~] [~~the inspector may~~] delete inapplicable subsections of Section VI., Optional Systems, and re-letter any remaining subsections;

(K) [~~(J)~~] [~~the inspector may~~] delete Subsection L., Other, of Section I., Structural Systems; Subsection E., Other of Section IV, Plumbing Supply, Distribution Systems and Fixtures and Subsection I., Other of Section V., Appliances;

(L) [~~(K)~~] [~~the inspector may~~] allocate such space in the "Additional Information Provided by the Inspector" section and in each of the spaces provided for comments for each inspected item as the inspector deems necessary, [~~or may~~] attach additional pages of comments to the report, or both; and

(M) [~~(I)~~] attach additional pages to the form if:

(i) it is necessary to report the inspection of a [~~part,~~] component, or system not contained in the standard form; [~~,~~] or

(ii) the space provided on the form is inadequate for a complete reporting of the inspection[~~, the inspector may attach additional pages to the form. When providing comments or additional pages to report on items listed on a form, the inspector shall arrange the comments or additional pages to follow the sequence of the items listed in the form adopted by the commission~~].

(4) (No change.)

(5) The inspector shall indicate, by checking the appropriate boxes on the form, whether each item was inspected, not inspected, not present, [~~and/~~]or deficient and [~~shall~~] explain the findings in the corresponding section in the body of [~~appropriate space on~~] the report form.

(6) This section does not apply to the following:

(A) re-inspections of a property performed for the same client; [~~or~~]

(B) (No change.)

(C) inspections for which federal or state law requires use of a different report; [~~or~~]

(D) quality control construction inspections of new homes performed for builders, including phased construction inspections, inspections performed solely to determine compliance with building codes, warranty or underwriting requirements, or inspections required by a municipality and the builder or other entity requires use of a different report, and the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a builder or other entity in accordance with the builder's requirements. The report is not intended as a substitute for an inspection of the property by an inspector of the buyer's choice. Standard inspections performed by a Texas Real Estate Commission licensee and reported on Texas Real Estate Commission promulgated report forms may contain additional information a buyer should consider in making a decision to purchase." If a report form required for use by the builder or builder's employee does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector;[~~.~~]

(E) an inspection of a building or addition that is not substantially complete; or

(F) inspections of a single system or component as outlined in clause (ii) of this subparagraph, provided that the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a buyer or seller in accordance with the client's requirements. The report addresses a single system or component and is not intended as a substitute for a complete standard inspection of the property. Standard inspections performed by a Texas Real Estate Commission licensee and reported on Texas Real Estate Commission promulgated report forms may contain additional information a buyer should consider in making a decision to purchase."

(i) If the client requires the use of a report form that does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector.

(ii) An inspection is considered to be of a single system or component if the inspection only addresses one of the following or a portion thereof:

(I) foundation;

(II) framing/structure, as outlined in §535.213(e)(2) of this title (relating to Approval of Courses in Real Estate Inspection);

(III) building enclosure;

(IV) roof system;

(V) plumbing system;

(VI) electrical system;

(VII) HVAC system;

(VIII) a single appliance; or

(IX) a single optional system as stated in the Standards of Practice.

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 February 14, 2013.

TRD-201300624
Kerri T. Galvin
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 936-3092

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22 TAC §§535.227 - 535.233

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

The Texas Real Estate Commission (TREC) proposes the repeal of §§535.227 - 535.233, concerning inspector standards of practice. The repeal of the sections was previously proposed and published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9280) but was withdrawn on February 12, 2013. The repeal is re-proposed because the subjects addressed in these sections will be covered in new §§535.227 - 535.233. TREC is simultaneously re-proposing as part of the Real Estate Inspector Committee comprehensive review and recommendations regarding inspector standards of practice. The Texas Real Estate Inspector Committee is an advisory committee of six professional inspectors and three public members appointed by TREC.

Kerri T. Galvin, Deputy General Counsel, has determined that for the first five-year period the repeal is effect there will be no significant fiscal implications for the state or for units of local government as a result of repealing the rules. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of repealing the rules.

Ms. Galvin also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be increased clarity for inspectors and consumers alike, as well as standards that more accurately reflect current technology, codes, and practices that form the basis of many of the standards. There is no anticipated economic cost

to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Kerri T. Galvin, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov.

The repeal is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed repeal.

§535.227. Standards of Practice: General Provisions.

§535.228. Standards of Practice: Minimum Inspection Requirements for Structural Systems.

§535.229. Standards of Practice: Minimum Inspection Requirements for Electrical Systems.

§535.230. Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems.

§535.231. Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

§535.232. Standards of Practice: Minimum Inspection Requirements for Appliances.

§535.233. Standards of Practice: Minimum Inspection Requirements for Optional Systems.

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

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Texas Real Estate Commission
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22 TAC §§535.227 - 535.233

The Texas Real Estate Commission (TREC) proposes new §§535.227 - 535.233, which would update and clarify the current Standards and Practice (Standards) for real estate inspectors. The new rules were previously proposed and published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9281) but were withdrawn on February 12, 2013. The new rules are being re-proposed following revisions made pursuant to comments received after the previous publication. The proposed rules make several non-substantive changes to the Standards by making them easier to read and providing a clearer understanding of what an inspector is and is not required to inspect and report. In addition, the rules make several substantive changes to the Standards to encourage a more performance based approach to real estate inspections. The new rules are proposed following a comprehensive review of the Standards by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC. Both the substantive and non-substantive revisions are recommended by the Committee. The substantive changes to the Standards are as follows:

New §535.227(a) expands the current definition of "Accessible" to clarify that an item is not accessible if the inspector has to climb over obstacles to gain access to it; adds a definition for "Component;" expands the current definition of "Inspect;" and clarifies that an inspector is required to report deficiencies "as specified by these standards of practice;" expands the definition of "Performance;" adds a definition for "Substantially completed;" and adds a definition for "Technically exhaustive." Subsection (b)(3) clarifies the intent and limitations of the Standards; specifies that an inspector is not required to: inspect sub-surface drainage systems; determine compatibility, product lawsuits, listing, testing or protocol authority; determine the presence, absence or risk of "Chinese drywall;" determine the cause or source of a condition; verify sizing efficiency or adequacy of a gutter or downspout system; or light a pilot light.

New §535.228(a) amends current rule language relating to crawl space ventilation and drainage to focus on the performance of the item. It also removes and consolidates redundant exemplars found in the current Standards. Subsection (b) amends current rule language relating to grading and draining around the foundation to focus on the performance of the item. Subsection (c) removes the specific requirement that an inspector report as deficient a roof covering that is not appropriate for the slope of the roof. It also specifies that an inspector is not required to exhaustively examine all fasteners and adhesions. Subsection (d) amends current rule language relating to attic space ventilation to focus on the performance of the item. In addition to those items currently required to be inspected relating to exterior walls and windows, subsection (f) requires an inspector to report deficiencies in weather-stripping, gaskets or other air barrier materials. It also specifies that an inspector is not required to provide an exhaustive list of locations of deficiencies and water penetrations. Subsection (j) removes the requirement that an inspector report deficiencies in visible footings, piers, posts, pilings, joists, decking, water proofing at interfaces, flashing, surfaces coverings, and attachment points of porches, decks, balconies and carports.

New §535.229(a) consolidates several redundant ground and bonding items. It also removes the requirement that inspectors report as deficient the absence of arc-fault circuit interrupters. Subsection (b) requires an inspector to inspect installed carbon monoxide alarms. The new rule updates the ground-fault circuit interruption language and moves the doorbell language from its current location under "appliances" to §535.229(b). It also removes and consolidates redundant exemplars found in the current Standards for switches and receptacles, and clarifies that an inspector is not required to remove the covers of junction, fixture, receptacle or switch boxes unless specifically required to do so by the Standards.

New §535.230(a) clarifies the intent of the Standards regarding heating equipment, including expanding the current rule language relating to inadequate access and clearances, gas shut off valves, and gas appliance connectors, to provide more specificity. The new rules require an inspector to report deficiencies in

the performance of a heat pump in electrical units. Subsection (b) clarifies the intent of the Standards regarding cooling equipment and other evaporative coolers, including expanding the current rule language relating to inadequate access and clearances to provide more specificity. Subsection (c) removes the requirement to report winterized units that are drained and shut down and consolidates several exemplars found in the current Standards. Subsection (d) removes several items found in the current Standards, deemed to be unrealistic for an inspector to inspect. Subsection (e) clarifies at what outdoor temperature an inspector is required to operate a heat pump and specifies that an inspector is not required to verify the tonnage match of indoor coils and outside coils or condensing units.

New §535.231 amends current rule language relating to static water pressure, fixtures and faucets not connected to appliances and fixture drains to focus on the performance of the item. The rule also removes and consolidates several exemplars found in the current Standards. Subsection (b) clarifies the intent of the Standards regarding water heaters, including expanding the current rule language relating to inadequate access and clearances, gas shut off valves, and gas appliance connectors, to provide more specificity. The rule also removes and consolidates several exemplars found in the current Standards. Subsection (c) clarifies the intent of the Standards regarding Hydro-massage therapy equipment, including expanding the current rule language relating to inadequate access and the performance and condition of components.

New §535.232, amends current rule language relating to several appliances to focus on the performance of the item. The rule changes the titles of several subsections of current §535.232 to bring them in line with industry terminology. The rule also removes and consolidates several exemplars related to various appliances found in the current Standards. Specifically, the rule adds several new requirements for ranges, cooktops, and ovens, including requiring the inspector to report as deficient combustible material within a certain area of cooktop burners, certain limitations regarding gas shutoff valves or connectors, and deficiencies in mounting and performance. The rule removes the requirement that an inspector inspect trash compactors, adds a requirement under "Garage door operators" that inspector report as deficient installed photo electric sensors located more than six inches above the garage floor, and moves door bells requirements to new §535.229(b).

New §535.233 removes the Outdoor Cooking Equipment Section, Gas Supply Section, Other Built-In Appliance Section and Whole House Vacuum System section. Paragraph (1) changes the titles of several paragraphs of §535.233 to bring them in line with industry terminology. The new rule clarifies the intent of the Standards regarding Landscape irrigation (sprinkler) systems, including requiring an inspector to report as deficient: inoperative zone valves, the absence of shut-off valves between the water meter and backflow device, and deficiencies in the performance of the water emission devices; such as, sprayer heads, rotary sprinkler heads, bubblers or drip lines. The new rules specify that an inspector is not required to inspect sizing and effectiveness of backflow prevention device. Paragraph (2) requires an inspector to report as deficient the presence of a single blockable main drain (potential entrapment hazard), the absence of ground-fault circuit interrupter protection devices and deficiencies in lighting fixtures. The rule specifies that an inspector is not required to disassemble filters, or determine the effectiveness of entrapment covers. Paragraph (3) requires an inspector to report as deficient the absence of ground-fault circuit interrupter protection devices in grade-level portions of unfinished accessory buildings used for storage or work areas, boathouses, and boat hoists. Paragraph (5) requires an inspector to report on the location of the distribution field in a private septic system.

Kerri T. Galvin, Deputy General Counsel, has determined that for the first five-year period the new rules are in effect there will be no significant fiscal implications for the state or for units of local government as a result of enforcing or administering the new rules. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the new rules.

Ms. Galvin also has determined that for each year of the first five years the new rules as proposed are in effect the public benefit anticipated as a result of enforcing the new rules will be increased clarity for inspectors and consumers alike, as well as standards that more accurately reflect current technology, codes, and practices that form the basis of many of the standards. There is no anticipated economic cost to persons who are required to comply with the proposed new rules.

Comments on the proposal may be submitted to Kerri T. Galvin, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov.

The new rules are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed new rules.

§535.227. Standards of Practice: General Provisions.

(a) Definitions.

(1) Accessible--In the reasonable judgment of the inspector, capable of being approached, entered, or viewed without:

(A) hazard to the inspector;

(B) having to climb over obstacles, moving furnishings or large, heavy, or fragile objects;

(C) using specialized equipment or procedures;

(D) disassembling items other than covers or panels intended to be removed for inspection;

(E) damaging property, permanent construction or building finish; or

(F) using a ladder for portions of the inspection other than the roof or attic space.

(2) Chapter 1102--Texas Occupations Code, Chapter 1102.

(3) Component--A part of a system.

(4) Cosmetic--Related only to appearance or aesthetics, and not related to performance, operability, or water penetration.

(5) Deficiency--In the reasonable judgment of the inspector, a condition that:

(A) adversely and materially affects the performance of a system, or component; or

(B) constitutes a hazard to life, limb, or property as specified by these standards of practice.

(6) Deficient--Reported as having one or more deficiencies.

(7) Inspect--To operate in normal ranges using ordinary controls at typical settings, look at and examine accessible systems or components and report observed deficiencies as specified by these standards of practice.

(8) Performance--Achievement of an operation, function or configuration relative to accepted industry standard practices with consideration of age and normal wear and tear from ordinary use.

(9) Report--To provide the inspector's opinions and findings on the standard inspection report form as required by §535.222 and §535.223 of this title.

(10) Specialized equipment--Equipment such as thermal imaging equipment, moisture meters, gas or carbon monoxide detection equipment, environmental testing equipment and devices, elevation determination devices, and ladders capable of reaching surfaces over one story above ground surfaces.

(11) Specialized procedures--Procedures such as environmental testing, elevation measurement, calculations and any method employing destructive testing that damages otherwise sound materials or finishes.

(12) Standards of practice--§§535.227 - 535.233 of this title.

(13) Substantially completed--The stage of construction when a new building, addition, improvement, or alteration to an existing building is sufficiently complete that the building, addition, improvement or alteration can be occupied or used for its intended purpose.

(14) Technically Exhaustive--A comprehensive investigation beyond the scope of a real estate inspection which would involve determining the cause or effect of deficiencies, exploratory probing or discovery, the use of specialized knowledge, equipment or procedures.

(b) Scope.

(1) These standards of practice define the minimum levels of inspection required for substantially completed residential improvements to real property up to four dwelling units. A real estate inspection is a non-technically exhaustive, limited visual survey and basic performance evaluation of the systems and components of a building using normal controls and does not require the use of specialized equipment or procedures. The purpose of the inspection is to provide the client with information regarding the general condition of the residence at the time of inspection. The inspector may provide a higher level of inspection performance than required by these standards of practice and may inspect components and systems in addition to those described by the standards of practice.

(2) General Requirements. The inspector shall:

(A) operate fixed or installed equipment and appliances listed herein in at least one mode with ordinary controls at typical settings;

(B) visually inspect accessible systems or components from near proximity to the systems and components, and from the interior of the attic and crawl spaces; and

(C) complete the standard inspection report form as required by §535.222 and §535.223 of this title.

(3) General limitations. The inspector is not required to:

(A) inspect:

(i) items other than those listed within these standards of practice;

(ii) elevators;

(iii) detached buildings, decks, docks, fences, or waterfront structures or equipment;

(iv) anything buried, hidden, latent, or concealed;

(v) sub-surface drainage systems;

(vi) automated or programmable control systems, automatic shut-off, photoelectric sensors, timers, clocks, metering devices, signal lights, lightning arrestor system, remote controls, security or data distribution systems, solar panels or smart home automation components; or

(vii) concrete flatwork such as driveways, sidewalks, walkways, paving stones or patios;

(B) report:

(i) past repairs that appear to be effective and workmanlike except as specifically required by these standards;

(ii) cosmetic or aesthetic conditions; or

(iii) wear and tear from ordinary use;

(C) determine:

(i) insurability, warrantability, suitability, adequacy, compatibility, capacity, reliability, marketability, operating costs, recalls, counterfeit products, product lawsuits, life expectancy, age, energy efficiency, vapor barriers, thermostatic performance, compliance with any code, listing, testing or protocol authority, utility sources, or manufacturer or regulatory requirements except as specifically required by these standards;

(ii) the presence or absence of pests, termites, or other wood-destroying insects or organisms;

(iii) the presence, absence, or risk of asbestos, lead-based paint, mold, mildew, corrosive or contaminated drywall "Chinese Drywall" or any other environmental hazard, environmental pathogen, carcinogen, toxin, mycotoxin, pollutant, fungal presence or activity, or poison;

(iv) types of wood or preservative treatment and fastener compatibility; or

(v) the cause or source of a condition;

(D) anticipate future events or conditions, including but not limited to:

(i) decay, deterioration, or damage that may occur after the inspection;

(ii) deficiencies from abuse, misuse or lack of use;

(iii) changes in performance of any component or system due to changes in use or occupancy;

(iv) the consequences of the inspection or its effects on current or future buyers and sellers;

(v) common household accidents, personal injury, or death;

(vi) the presence of water penetrations; or

(vii) future performance of any item;

(E) operate shut-off, safety, stop, pressure or pressure-regulating valves or items requiring the use of codes, keys, combinations, or similar devices;

(F) designate conditions as safe;

(G) recommend or provide engineering, architectural, appraisal, mitigation, physical surveying, realty, or other specialist services;

(H) review historical records, installation instructions, repair plans, cost estimates, disclosure documents, or other reports;

(I) verify sizing, efficiency, or adequacy of the ground surface drainage system;

(J) verify sizing, efficiency, or adequacy of the gutter and downspout system;

(K) operate recirculation or sump pumps;

(L) remedy conditions preventing inspection of any item;

(M) apply open flame or light a pilot to operate any appliance;

(N) turn on decommissioned equipment, systems or utility services; or

(O) provide repair cost estimates, recommendations, or re-inspection services.

(4) In the event of a conflict between specific provisions and general provisions in the standards of practice, specific provisions shall take precedence.

(5) Departure.

(A) An inspector may depart from the inspection of a component or system required by the standards of practice only if:

(i) the inspector and client agree the item is not to be inspected;

(ii) the inspector is not qualified to inspect the item;

(iii) in the reasonable judgment of the inspector, conditions exist that prevent inspection of an item;

(iv) the item is a common element of a multi-family development and is not in physical contact with the unit being inspected, such as the foundation under another building or a part of the foundation under another unit in the same building;

(v) the inspector reasonably determines that conditions or materials are hazardous to the health or safety of the inspector; or

(vi) in the reasonable judgment of the inspector, the actions of the inspector may cause damage to the property.

(B) If an inspector departs from the inspection of a component or system required by the standards of practice, the inspector shall:

(i) notify the client at the earliest practical opportunity that the component or system will not be inspected; and

(ii) make an appropriate notation on the inspection report form, stating the reason the component or system was not inspected.

(C) If the inspector routinely departs from inspection of a component or system required by the standards of practice, and the inspector has reason to believe that the property being inspected includes that component or system, the earliest practical opportunity for the notice required by this subsection is the first contact the inspector makes with the prospective client.

(c) Enforcement. Failure to comply with the standards of practice is grounds for disciplinary action as prescribed by Chapter 1102.

§535.228. Standards of Practice: Minimum Inspection Requirements for Structural Systems.

(a) Foundations. The inspector shall:

(1) render a written opinion as to the performance of the foundation; and

(2) report:

(A) the type of foundations;

(B) the vantage point from which the crawl space was inspected;

(3) generally report present and visible indications used to render the opinion of adverse performance, such as:

(A) binding, out-of-square, non-latching doors;

(B) framing or frieze board separations;

(C) sloping floors;

(D) window, wall, floor, or ceiling cracks or separations; and

(E) rotating, buckling, cracking, or deflecting masonry cladding.

(4) report as Deficient:

(A) deteriorated materials;

(B) deficiencies in foundation components such as; beams, joists, bridging, blocking, piers, posts, pilings, columns, sills or subfloor;

(C) deficiencies in retaining walls related to foundation performance;

(D) exposed or damaged reinforcement;

(E) crawl space ventilation that is not performing; and

(F) crawl space drainage that is not performing.

(5) The inspector is not required to:

(A) enter a crawl space or any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high;

(B) provide an exhaustive list of indicators of possible adverse performance; or

(C) inspect retaining walls not related to foundation performance.

(b) Grading and drainage. The inspector shall:

(1) report as Deficient:

(A) drainage around the foundation that is not performing;

(B) deficiencies in grade levels around the foundation; and

(C) deficiencies in installed gutter and downspout systems.

(2) The inspector is not required to:

(A) inspect flatwork or detention/retention ponds (except as related to slope and drainage);

(B) determine area hydrology or the presence of underground water; or

(C) determine the efficiency or performance of underground or surface drainage systems.

(c) Roof covering materials. The inspector shall:

(1) inspect the roof covering materials from the surface of the roof;

(2) report:

(A) type of roof coverings;

(B) vantage point from where the roof was inspected;

(C) evidence of water penetration;

(D) evidence of previous repairs to the roof covering material, flashingdetails, skylights and other roof penetrations; and

(3) report as Deficient deficiencies in:

(A) fasteners;

(B) adhesion;

(C) roof covering materials;

(D) flashing details;

(E) skylights; and

(F) other roof penetrations.

(4) The inspector is not required to:

(A) determine the remaining life expectancy of the roof covering;

(B) inspect the roof from the roof level if, in the inspector's reasonable judgment, the inspector cannot safely reach or stay on the roof or significant damage to the roof covering materials may result from walking on the roof;

(C) determine the number of layers of roof covering material;

(D) identify latent hail damage;

(E) exhaustively examine all fasteners and adhesion, or

(F) provide an exhaustive list of locations of deficiencies and water penetrations.

(d) Roof structures and attics. The inspector shall:

(1) report:

(A) the vantage point from which the attic space was inspected;

(B) approximate average depth of attic insulation;

(C) evidence of water penetration;

(2) report as Deficient:

(A) attic space ventilation that is not performing;

(B) deflections or depressions in the roof surface as related to adverse performance of the framing and decking;

(C) missing insulation;

(D) deficiencies in

(i) installed framing members and decking;

(ii) attic access ladders and access openings; and

(iii) attic ventilators.

(3) The inspector is not required to:

(A) enter attics or unfinished spaces where openings are less than 22 inches by 30 inches or headroom is less than 30 inches;

(B) operate powered ventilators; or

(C) provide an exhaustive list of locations of deficiencies and water penetrations.

(e) Interior walls, ceilings, floors, and doors. The inspector shall:

(1) report evidence of water penetration;

(2) report as Deficient:

(A) deficiencies in the condition and performance of doors and hardware;

(B) deficiencies related to structural performance or water penetration; and

(C) the absence of or deficiencies in fire separation between the garage and the living space and between the garage and its attic.

(3) The inspector is not required to:

(A) report cosmetic damage or the condition of floor, wall, or ceiling coverings; paints, stains, or other surface coatings; cabinets; or countertops, or

(B) provide an exhaustive list of locations of deficiencies and water penetrations.

(f) Exterior walls, doors, and windows. The inspector shall:

(1) report evidence of water penetration;

(2) report as Deficient:

(A) the absence of performing emergency escape and rescue openings in all sleeping rooms;

(B) a solid wood door less than 1-3/8 inches in thickness, a solid or honeycomb core steel door less than 1-3/8 inches thick, or a 20-minute fire-rated door between the residence and an attached garage;

(C) missing or damaged screens;

(D) deficiencies related to structural performance or water penetration;

(E) deficiencies in:

(i) weatherstripping, gaskets or other air barrier materials;

(ii) claddings;

(iii) water resistant materials and coatings;

(iv) flashing details and terminations;

(v) the condition and performance of exterior doors, garage doors and hardware; and

(vi) the condition and performance of windows and components.

(3) The inspector is not required to:

(A) report the condition of awnings, blinds, shutters, security devices, or other non-structural systems;

(B) determine the cosmetic condition of paints, stains, or other surface coatings; or

(C) operate a lock if the key is not available.

(D) provide an exhaustive list of locations of deficiencies and water penetrations.

(g) Exterior and interior glazing. The inspector shall:

(1) report as Deficient:

(A) insulated windows that are obviously fogged or display other evidence of broken seals;

(B) deficiencies in glazing, weather stripping and glazing compound in windows and doors; and

(C) the absence of safety glass in hazardous locations.

(2) The inspector is not required to:

(A) exhaustively inspect insulated windows for evidence of broken seals;

(B) exhaustively inspect glazing for identifying labels; or

(C) identify specific locations of damage.

(h) Interior and exterior stairways. The inspector shall:

(1) report as Deficient:

(A) spacing between intermediate balusters, spindles, or rails for steps, stairways, guards, and railings that permit passage of an object greater than 4 inches in diameter, except that on the open side of the staircase treads, spheres less than 4-3/8 inches in diameter may pass through the guard rail balusters or spindles; and

(B) deficiencies in steps, stairways, landings, guardrails, and handrails.

(2) The inspector is not required to exhaustively measure every stairway component.

(i) Fireplaces and chimneys. The inspector shall:

(1) report as Deficient:

(A) built-up creosote in accessible areas of the firebox and flue;

(B) the presence of combustible materials in near proximity to the firebox opening;

(C) the absence of fireblocking at the attic penetration of the chimney flue, where accessible; and

(D) deficiencies in the:

(i) damper;

(ii) lintel, hearth, hearth extension, and firebox;

(iii) gas valve and location;

(iv) circulating fan;

(v) combustion air vents; and

(vi) chimney structure, termination, coping, crown, caps, and spark arrestor.

(2) The inspector is not required to:

(A) verify the integrity of the flue;

(B) perform a chimney smoke test; or

(C) determine the adequacy of the draft.

(j) Porches, Balconies, Decks, and Carports. The inspector shall:

(1) inspect:

(A) attached balconies, carports, and porches;

(B) abutting porches, decks, and balconies that are used for ingress and egress; and

(2) report as Deficient:

(A) on decks 30 inches or higher above the adjacent grade, spacings between intermediate balusters, spindles, or rails that permit passage of an object greater than four inches in diameter; and

(B) deficiencies in accessible components.

(3) The inspector is not required to:

(A) exhaustively measure every porch, balcony, deck, or attached carport components; or

(B) enter any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high.

§535.229. Standards of Practice: Minimum Inspection Requirements for Electrical Systems.

(a) Service entrance and panels. The inspector shall:

(1) report as Deficient:

(A) a drop, weatherhead or mast that is not securely fastened to the building;

(B) the absence of or deficiencies in the grounding electrode system;

(C) missing or damaged dead fronts or covers plates;

(D) conductors not protected from the edges of electrical cabinets, gutters, or cutout boxes;

(E) electrical cabinets and panel boards not appropriate for their location; such as a clothes closet, bathrooms or where they are exposed to physical damage;

(F) electrical cabinets and panel boards that are not accessible or do not have a minimum of 36-inches of clearance in front of them;

(G) deficiencies in:

(i) electrical cabinets, gutters, cutout boxes, and panel boards;

(ii) the insulation of the service entrance conductors, drip loop, separation of conductors at weatherheads, and clearances;

(iii) the compatibility of overcurrent devices and conductors;

(iv) the overcurrent device and circuit for labeled and listed 240 volt appliances;

(v) bonding and grounding;

(vi) conductors;

(vii) the operation of installed ground-fault or arc-fault circuit interrupter devices; and

(H) the absence of:

(i) trip ties on 240 volt overcurrent devices or multi-wire branch circuit;

(ii) appropriate connections;

(iii) anti-oxidants on aluminum conductor terminations;

(iv) a main disconnecting means.

(2) The inspector is not required to:

(A) determine present or future sufficiency of service capacity amperage, voltage, or the capacity of the electrical system;

(B) test arc-fault circuit interrupter devices when the property is occupied or damage to personal property may result, in the inspector's reasonable judgment;

(C) conduct voltage drop calculations;

(D) determine the accuracy of overcurrent device labeling;

(E) remove covers where hazardous as judged by the inspector;

(F) verify the effectiveness of overcurrent devices; or

(G) operate overcurrent devices.

(b) Branch circuits, connected devices, and fixtures. The inspector shall:

(1) manually test the installed and accessible smoke and carbon monoxide alarms;

(2) report the type of branch circuit conductors;

(3) report as Deficient:

(A) the absence of ground-fault circuit interrupter protection in all:

(i) bathroom receptacles;

(ii) garage receptacles;

(iii) outdoor receptacles;

(iv) crawl space receptacles;

(v) unfinished basement receptacles;

(vi) kitchen countertop receptacles; and

(vii) receptacles that are located within six feet of the outside edge of a sink;

(B) the failure of operation of ground-fault circuit interrupter protection devices;

(C) missing or damaged receptacle, switch or junction box covers;

(D) the absence of:

(i) equipment disconnects;

(ii) appropriate connections, such as copper/aluminum approved devices, if branch circuit aluminum conductors are discovered in the main or sub-panel based on a random sampling of accessible receptacles and switches;

(E) deficiencies in:

(i) receptacles;

(ii) switches;

(iii) bonding or grounding;

(iv) wiring, wiring terminations, junction boxes, devices, and fixtures, including improper location;

(v) doorbell and chime components;

(vi) smoke and carbon monoxide alarms;

(F) improper use of extension cords;

(G) deficiencies in or absences of conduit, where applicable; and

(H) the absence of smoke alarms:

(i) in each sleeping room;

(ii) outside each separate sleeping area in the immediate vicinity of the sleeping rooms; and

(iii) in the living space of each story of the dwelling.

(4) The inspector is not required to:

(A) inspect low voltage wiring;

(B) disassemble mechanical appliances;

(C) verify the effectiveness of smoke alarms;

(D) verify interconnectivity of smoke alarms;

(E) activate smoke or carbon monoxide alarms that are or may be monitored or require the use of codes;

(F) verify that smoke alarms are suitable for the hearing-impaired;

(G) remove the covers of junction, fixture, receptacle or switch boxes unless specifically required by these standards.

§535.230. Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems.

(a) Heating equipment. The inspector shall:

(1) report:

(A) the type of heating systems;

(B) the energy sources;

(2) report as Deficient:

(A) inoperative units;

(B) deficiencies in the thermostats;

(C) inappropriate location;

(D) the lack of protection from physical damage;

(E) burners, burner ignition devices or heating elements, switches, and thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;

(F) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(G) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;

(H) deficiencies in mounting and performance of window and wall units;

(I) in electric units, deficiencies in:

(i) performance of heat pumps;

(ii) performance of heating elements; and

(iii) condition of conductors; and

(J) in gas units:

(i) gas leaks;

(ii) flame impingement, uplifting flame, improper flame color, or excessive scale buildup;

(iii) the absence of a gas shut-off valve within six feet of the appliance;

(iv) the absence of a gas appliance connector or one that exceeds six feet in length;

(v) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings; and

(vi) deficiencies in:

(I) combustion, and dilution air;

(II) gas shut-off valves;

(III) access to a gas shutoff valves that prohibits full operation;

(IV) gas appliance connector materials; and

(V) the vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances; and

(b) Cooling equipment other than evaporative coolers. The inspector shall:

(1) report the type of systems;

(2) report as Deficient:

(A) inoperative units;

(B) inadequate cooling as demonstrated by its performance;

(C) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(D) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;

(E) noticeable vibration of blowers or fans;

(F) water in the auxiliary/secondary drain pan;

(G) a primary drain pipe that discharges in a sewer vent;

(H) missing or deficient refrigerant pipe insulation;

(I) dirty coils, where accessible;

(J) condensing units lacking adequate clearances or air circulation or that has deficiencies in the fins, location, levelness, or elevation above grade surfaces;

(K) deficiencies in:

(i) the condensate drain and auxiliary/secondary pan and drain system;

(ii) mounting and performance of window or wall units; and

(iii) thermostats.

(c) Evaporative coolers. The inspector shall:

(1) report:

(A) type of systems;

(B) the type of water supply line;

(2) report as Deficient:

(A) inoperative units;

(B) inadequate access and clearances;

(C) deficiencies in performance or mounting;

(D) missing or damaged components;

(E) the presence of active water leaks; and

(F) the absence of backflow prevention.

(d) Duct systems, chases, and vents. The inspector shall report as Deficient:

(1) damaged duct systems or improper material;

(2) damaged or missing duct insulation;

(3) the absence of air flow at accessible supply registers;

(4) the presence of gas piping and sewer vents concealed in ducts, plenums and chases;

(5) ducts or plenums in contact with earth; and

(6) deficiencies in:

(A) filters;

(B) grills or registers; and

(C) the location of return air openings.

(e) The inspector is not required to:

(1) program digital thermostats or controls;

(2) inspect:

(A) for pressure of the system refrigerant, type of refrigerant, or refrigerant leaks;

(B) winterized or decommissioned equipment; or

(C) duct fans, humidifiers, dehumidifiers, air purifiers, motorized dampers, electronic air filters, multi-stage controllers, sequencers, heat reclaimers, wood burning stoves, boilers, oil-fired units, supplemental heating appliances, de-icing provisions, or reversing valves;

(3) operate:

(A) setback features on thermostats or controls;

(B) cooling equipment when the outdoor temperature is less than 60 degrees Fahrenheit;

(C) radiant heaters, steam heat systems, or unvented gas-fired heating appliances; or

(D) heat pumps, in the heat pump mode, when the outdoor temperature is above 70 degrees;

(4) verify:

(A) compatibility of components;

(B) tonnage match of indoor coils and outside coils or condensing units;

(C) the accuracy of thermostats; or

(D) the integrity of the heat exchanger; or

(5) determine:

(A) sizing, efficiency, or adequacy of the system;

(B) balanced air flow of the conditioned air to the various parts of the building; or

(C) types of materials contained in insulation.

§535.231. Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

(a) Plumbing systems. The inspector shall:

(1) report:

(A) location of water meter;

(B) location of homeowners main water supply shutoff valve; and

(C) static water pressure;

(2) report as Deficient:

(A) the presence of active leaks;

(B) the lack of a pressure reducing valve when the water pressure exceeds 80 PSI;

(C) the lack of an expansion tank at the water heater(s) when a pressure reducing valve is in place at the water supply line/system;

(D) the absence of:

(i) fixture shut-off valves;

(ii) dielectric unions, when applicable;

(iii) back-flow devices, anti-siphon devices, or air gaps at the flow end of fixtures; and

(E) deficiencies in:

(i) water supply pipes and waste pipes;

(ii) the installation and termination of the vent system;

(iii) the performance of fixtures and faucets not connected to an appliance;

(iv) water supply, as determined by viewing functional flow in two fixtures operated simultaneously;

(v) fixture drain performance;

(vi) orientation of hot and cold faucets;

(vii) installed mechanical drain stops;

(viii) commodes, fixtures, showers, tubs, and enclosures; and

(ix) the condition of the gas distribution system.

(3) The inspector is not required to:

(A) operate any main, branch, or shut-off valves;

(B) operate or inspect sump pumps or waste ejector pumps;

(C) verify the performance of:

(i) the bathtub overflow;

(ii) clothes washing machine drains or hose bibbs; or

(iii) floor drains;

(4) inspect:

(A) any system that has been winterized, shut down or otherwise secured;

(B) circulating pumps, free-standing appliances, solar water heating systems, water-conditioning equipment, filter systems, water mains, private water supply systems, water wells, pressure tanks, sprinkler systems, swimming pools, or fire sprinkler systems;

(C) inaccessible gas supply system components for leaks;

(D) for sewer clean-outs; or

(E) for the presence or performance of private sewage disposal systems; or

(5) determine:

(A) quality, potability, or volume of the water supply; or

(B) effectiveness of backflow or anti-siphon devices.

(b) Water heaters. The inspector shall:

(1) report:

(A) the energy source;

(B) the capacity of the units;

(2) report as Deficient:

(A) inoperative units;

(B) leaking or corroded fittings or tanks;

(C) damaged or missing components;

(D) the absence of a cold water shut-off valve;

(E) if applicable, the absence of a pan or a pan drain system that does not terminate over a waste receptor or to the exterior of the building above the ground surface;

(F) inappropriate locations;

(G) the lack of protection from physical damage;

(H) burners, burner ignition devices or heating elements, switches, or thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;

(I) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(J) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;

(K) the absence of or deficiencies in the temperature and pressure relief valve and discharge piping;

(L) a temperature and pressure relief valve that failed to operate, when tested manually;

(M) in electric units, deficiencies in:

(i) performance of heating elements; and

(ii) condition of conductors; and

(N) in gas units:

(i) gas leaks;

(ii) flame impingement, uplifting flame, improper flame color, or excessive scale build-up;

(iii) the absence of a gas shut-off valve within six feet of the appliance;

(iv) the absence of a gas appliance connector or one that exceeds six feet in length;

(v) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings;

(vi) deficiencies in:

(I) combustion and dilution air;

(II) gas shut-off valves;

(III) access to a gas shutoff valves that prohibit full operation;

(IV) gas appliance connector materials; and

(V) vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances.

(3) The inspector is not required to:

(A) verify the effectiveness of the temperature and pressure relief valve, discharge piping, or pan drain pipes;

(B) operate the temperature and pressure relief valve if the operation of the valve may, in the inspector's reasonable judgment, cause damage to persons or property; or

(C) determine the efficiency or adequacy of the unit.

(c) Hydro-massage therapy equipment. The inspector shall:

(1) report as Deficient:

(A) inoperative units;

(B) the presence of active leaks;

(C) deficiencies in components and performance;

(D) missing and damaged components;

(E) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish; and

(F) the absence or failure of operation of ground-fault circuit interrupter protection devices; and

(2) The inspector is not required to determine the adequacy of self-draining features of circulation systems.

§535.232. Standards of Practice: Minimum Inspection Requirements for Appliances.

(a) Dishwashers. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) rusted, missing or damaged components;

(4) the presence of active water leaks; and

(5) the absence of backflow prevention.

(b) Food waste disposers. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components; and

(4) the presence of active water leaks.

(c) Range hoods and exhaust systems. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components;

(4) ducts that do not terminate outside the building, if the unit is not of a re-circulating type or configuration; and

(5) improper duct material.

(d) Electric or gas ranges, cooktops, and ovens. The inspector shall report as Deficient:

(1) inoperative units;

(2) missing or damaged components;

(3) combustible material within thirty inches above the cook top burners;

(4) absence of an anti-tip device, if applicable;

(5) gas leaks;

(6) the absence of a gas shutoff valve within six feet of the appliance;

(7) the absence of a gas appliance connector or one that exceeds six feet in length;

(8) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings;

(9) deficiencies in:

(A) thermostat accuracy (within 25 degrees at a setting of 350° F);

(B) mounting and performance;

(C) gas shut-off valves;

(D) access to a gas shutoff valves that prohibits full operation; and

(E) gas appliance connector materials.

(e) Microwave ovens. The inspector shall inspect built-in units and report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting; and

(3) missing or damaged components.

(f) Mechanical exhaust systems and bathroom heaters. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components;

(4) ducts that do not terminate outside the building; and

(5) a gas heater that is not vented to the exterior of the building unless the unit is listed as an unvented type.

(g) Garage door operators. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components;

(4) installed photo electric sensors located more than six inches above the garage floor; and

(5) door locks or side ropes that have not been removed or disabled.

(h) Dryer exhaust systems. The inspector shall report as Deficient:

(1) missing or damaged components;

(2) the absence of a dryer exhaust system when provisions are present for a dryer;

(3) ducts that do not terminate to the outside of the building;

(4) screened terminations; and

(5) ducts that are not made of metal with a smooth interior finish.

(i) The inspector is not required to:

(1) operate or determine the condition of other auxiliary components of inspected items;

(2) test for microwave oven radiation leaks;

(3) inspect self-cleaning functions;

(4) disassemble appliances;

(5) determine the adequacy of venting systems; or

(6) determine proper routing and lengths of duct systems.

§535.233. Standards of Practice: Minimum Inspection Requirements for Optional Systems.

If an inspector agrees to inspect a component described in this section, §535.227 of this title (relating to Standards of Practice: General Provisions) and the applicable provisions of this section apply.

(1) Landscape irrigation (sprinkler) systems. The inspector shall:

(A) manually operate all zones or stations on the system through the controller;

(B) report as Deficient:

(i) the absence of a rain or moisture sensor,

(ii) inoperative zone valves;

(iii) surface water leaks;

(iv) the absence of a backflow prevention device;

(v) the absence of shut-off valves between the water meter and backflow device;

(vi) deficiencies in the performance and mounting of the controller;

(vii) missing or damaged components; and

(viii) deficiencies in the performance of the water emission devices; such as, sprayer heads, rotary sprinkler heads, bubblers or drip lines.

(C) The inspector is not required to inspect:

(i) for effective coverage of the irrigation system;

(ii) the automatic function of the controller;

(iii) the effectiveness of the sensors; such as, rain, moisture, wind, flow or freeze sensors; or

(iv) sizing and effectiveness of backflow prevention device.

(2) Swimming pools, spas, hot tubs, and equipment. The inspector shall:

(A) report the type of construction;

(B) report as Deficient:

(i) the presence of a single blockable main drain (potential entrapment hazard);

(ii) a pump motor, blower, or other electrical equipment that lacks bonding;

(iii) the absence of or deficiencies in safety barriers;

(iv) water leaks in above-ground pipes and equipment;

(v) the absence or failure in performance of ground-fault circuit interrupter protection devices; and

(vi) deficiencies in:

(I) surfaces;

(II) tiles, coping, and decks;

(III) slides, steps, diving boards, handrails, and other equipment;

(IV) drains, skimmers, and valves;

(V) filters, gauges, pumps, motors, controls, and sweeps;

(VI) lighting fixtures; and

(VII) the pool heater that these standards of practice require to be reported for the heating system.

(C) The inspector is not required to:

(i) disassemble filters or dismantle or otherwise open any components or lines;

(ii) operate valves;

(iii) uncover or excavate any lines or concealed components of the system;

(iv) fill the pool, spa, or hot tub with water;

(v) inspect any system that has been winterized, shut down, or otherwise secured;

(vi) determine the presence of sub-surface water tables;

(vii) determine the effectiveness of entrapment covers;

(viii) determine the presence of pool shell or sub-surface leaks; or

(ix) inspect ancillary equipment such as computer controls, covers, chlorinators or other chemical dispensers, or water ionization devices or conditioners other than required by this section.

(3) Outbuildings. The inspector shall report as Deficient:

(A) the absence or failure in performance of ground-fault circuit interrupter protection devices in grade-level portions of unfinished accessory buildings used for storage or work areas, boathouses, and boat hoists; and

(B) deficiencies in the structural, electrical, plumbing, heating, ventilation, and cooling systems that these standards of practice require to be reported for the principal building.

(4) Private water wells. The inspector shall:

(A) operate at least two fixtures simultaneously;

(B) recommend or arrange to have performed coliform testing;

(C) report:

(i) the type of pump and storage equipment;

(ii) the proximity of any known septic system;

(D) report as Deficient deficiencies in:

(i) water pressure and flow and performance of pressure switches;

(ii) the condition of accessible equipment and components; and

(iii) the well head, including improper site drainage and clearances.

(E) The inspector is not required to:

(i) open, uncover, or remove the pump, heads, screens, lines, or other components of the system;

(ii) determine the reliability of the water supply or source; or

(iii) locate or verify underground water leaks.

(5) Private sewage disposal (septic) systems. The inspector shall:

(A) report:

(i) the type of system;

(ii) the location of the drain or distribution field;

(iii) the proximity of any known water wells, underground cisterns, water supply lines, bodies of water, sharp slopes or breaks, easement lines, property lines, soil absorption systems, swimming pools, or sprinkler systems;

(B) report as Deficient:

(i) visual or olfactory evidence of effluent seepage or flow at the surface of the ground;

(ii) inoperative aerators or dosing pumps; and

(iii) deficiencies in:

(I) accessible components;

(II) functional flow;

(III) site drainage and clearances around or adjacent to the system; and

(IV) the aerobic discharge system.

(C) The inspector is not required to:

(i) excavate or uncover the system or its components;

(ii) determine the size, adequacy, or efficiency of the system; or

(iii) determine the type of construction used.

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 February 14, 2013.

TRD-201300626
Kerri T. Galvin
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 936-3092

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TITLE 34. PUBLIC FINANCE

PART 10. TEXAS PUBLIC FINANCE AUTHORITY

CHAPTER 221. DISTRIBUTION OF BOND PROCEEDS

34 TAC §§221.2 - 221.4

The Texas Public Finance Authority (Authority) proposes amendments to §§221.2 - 221.4, concerning Distribution of Bond Proceeds.

The proposed amendments to §§221.2 - 221.4 will clarify the process for client agencies to request financing through the issuance of public securities by the Authority.

Further, the Authority has reviewed all of the rules in Chapter 221 as a part of its agency rule review process and has determined that the reason for adoption of each rule in that chapter continues to exist, including sections of Chapter 221 for which no amendments are proposed, specifically §§221.1, 221.5, and 221.6.

Susan K. Durso, General Counsel, has determined that for each year of the first five-year period the proposed amendments will be in effect, there will be no additional fiscal impact to state and local governments as a result of the enforcement or administration of the amended rules. Client agencies are currently required to attend meetings of the Authority and the Bond Review Board at which the client agency's request for financing will be considered. Therefore, the amendment to §221.3 stating that requirement only codifies the current requirement and any costs associated with travel for client agencies is not increased by the proposed amendment. There will be no effect on local employment or the local economy as a result of the proposed amendments.

Ms. Durso has determined that for each year of the first five-year period the amendments are in effect the public benefit anticipated as a result of the proposed amendments will be that those client agencies that seek financing through the issuance of public securities by the Authority will have a clearer understanding of the process for requesting financing. There is no anticipated

additional economic cost to persons who are required to comply with the amended sections. There is no anticipated difference in cost of compliance between micro, small, and large businesses and no anticipated economic cost for these entities.

Comments on the proposed amendments and the rule review of Chapter 221 may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Susan K. Durso, General Counsel, Texas Public Finance Authority, 300 W. 15th Street, Room 411, Austin, Texas 78701 or by electronic mail to *susan.durso@tpfa.state.tx.us* with the words "Proposed Amendments to Chapter 221" in the subject line. Comments should be presented in the order of the proposed rules. Comments not timely received or submitted electronically without the words "Proposed Amendments to Chapter 221" in the subject line may not be considered.

The amendments are proposed pursuant to Texas Government Code, §1232.067, which authorizes the Authority's Board of Directors (Board) to adopt rules necessary for the Board to administer its functions and Texas Government Code, Chapter 1232, the Authority's enabling act. Because the Authority continues to issue public securities as authorized by the legislature, the reasons for the administrative rules in Chapter 221 continue. Accordingly, the Authority asserts that the reason for adoption of these rules continues to exist.

The sections affect Texas Government Code, Chapter 1232.

§221.2. Definitions.

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

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

(5) Bonds--Public securities issued by the authority pursuant to a constitutional provision and the Act, the Act, or other legislation, including bonds, notes and commercial paper.

(6) (No change.)

(7) Client Agency--A state agency or institution of higher education, or other entity on whose behalf the board may issue bonds [~~and who has control of or responsibility for facilities to be financed with proceeds of such bonds~~].

(8) - (10) (No change.)

(11) Constitutional provision--A provision of the Texas Constitution that authorizes the issuance of general obligation bonds by the authority [~~Authority~~]; namely: Article III, §49-h;[;] Article III, §49(e); Article III, §49(i);[;] Article III, §49-l;[;] Article III, §49-n;[;] Article III, §50-f;[;] Article III, §50-g;[;] or Article III, §67.

(12) - (25) (No change.)

(26) Project costs--To the extent authorized by law or regulation, all costs incurred by the authority, or any client agency requesting financing of a project with respect to the acquisition, construction, or equipment of new facilities, [~~or~~] for major repair or renovation of existing facilities, or other qualified project expenditure [~~as the case may be,~~] including, but not limited to, the costs of:

(A) - (I) (No change.)

(27) - (30) (No change.)

§221.3. Bond Issuance Process.

(a) (No change.)

(b) Request for financing. A request for financing under this section shall include:

(1) a resolution of the client agency's governing body signed by the appropriate officer authorizing submission of the request for financing and evidence of approval by any other individual or body from which approval for debt issuance is required;

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

(c) (No change.)

(d) Board action. The request for financing will be posted for consideration by the board at the next open meeting following the authority's receipt of the request, for which timely public notice may be given pursuant to Texas Government Code, Chapter 551. The client agency will be informed promptly of a change in the board's meeting date for the month and the exact date on which the request will be considered.

(1) The board may either approve the request or require additional information. When it approves a request for financing, the board will also determine the type of public security to be issued and the method of sale whether [~~of the bonds, either~~] negotiated, [~~or~~] competitive, or through private placement [~~the issuance of commercial paper notes~~].

(2) The board's [~~Board's~~] approval of a request for financing is deemed to constitute approval of the submission of an application to the Bond Review Board for approval of the issuance of debt and instruction to staff to proceed with submission of the application.

(3) - (5) (No change.)

(e) At least one representative of a client agency must attend any board meeting, including meetings of the Bond Review Board, at which the client agency's financing request is considered, unless otherwise advised by the executive director or the executive director's designee.

(f) [~~(e)~~] Procedures following board approval of a request for financing through the issuance of bonds. As soon as possible following the board's approval of a request for financing, the authority staff, financial advisors, bond counsel, representatives of the client agency, and, for negotiated sales, the senior manager of the underwriting syndicate and its counsel, will convene an organization meeting to prepare a schedule of events for the financing, and begin work on the financing documents and an application for Bond Review Board approval of the financing.

(1) In most cases, the application for Bond Review Board approval will be submitted timely for consideration and approval of the Bond Review Board at its next regularly scheduled meeting following the board's approval of the request, however, the timing of the submission is within the discretion of the executive director.

(2) After the Bond Review Board approves the financing, the issuance and sale of the bonds may be scheduled and completed.

§221.4. Criteria for Issuance of Public Securities [~~Bonds or Commercial Paper Notes~~].

(a) The authority shall not issue a public security [~~bonds or commercial paper notes~~] to finance any project or cost related thereto, unless:

(1) (No change.)

(2) the board has approved the request for financing and has determined to proceed with the issuance of public securities [~~bonds or commercial paper notes~~];

(3) the governing body of the client agency requesting such financing has authorized the execution of a memorandum of understanding between the client agency and the authority relating to the

specific public securities [~~bond issue or commercial paper notes~~] program and has agreed to necessary financing documents as may be appropriate and consistent with these sections;

(4) the public securities [~~bond or commercial paper notes~~] issuance and the projects have been reviewed and approved by the Bond Review Board or any other agency required to review such bond proceedings or approve projects as authorized by law;

(5) - (6) (No change.)

(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 February 15, 2013.

TRD-201300663
Susan Durso
General Counsel
Texas Public Finance Authority
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 463-3143

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CHAPTER 225. MASTER LEASE PURCHASE PROGRAM

34 TAC §225.1, §225.3

The Texas Public Finance Authority (Authority) proposes amendments to §225.1 and §225.3, concerning Master Lease Purchase Program.

The proposed amendment to §225.1 addresses grammatical irregularities and the proposed amendment in §225.3 creates consistency with amendments in §225.7 adopted in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1219).

Further, the Authority has reviewed all of the rules in Chapter 225 as a part of its agency rule review process and has determined that the reason for adoption of each rule in that chapter continues to exist, including sections of Chapter 225 for which no amendments are proposed, specifically §225.5.

Susan K. Durso, General Counsel, has determined that for each year of the first five-year period the proposed amendments will be in effect, there will be no additional fiscal impact to state and local governments as a result of the enforcement or administration of the amended sections. There will be no effect on local employment or the local economy as a result of the proposed amendments.

Ms. Durso has determined that for each year of the first five-year period the amendments are in effect the public benefit anticipated as a result of the proposed amendments will be that those client agencies that seek financing through the issuance of public securities by Authority will have a clearer understanding of the Master Lease Purchase Program administrative fee collection process. There is no anticipated additional economic cost to persons who are required to comply with the amended sections. There is no anticipated difference in cost of compliance between micro, small, and large businesses and no anticipated economic cost for these entities.

Comments on the proposed amendments and the review of Chapter 225 may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Susan K. Durso, General Counsel, Texas Public Finance Authority, 300 W. 15th Street, Room 411, Austin, Texas 78701 or by electronic mail to *susan.durso@tpfa.state.tx.us* with the words "Proposed Amendments to Chapter 225" in the subject line. Comments should be presented in the order of the proposed amended rules. Comments not timely received or submitted electronically without the words "Proposed Amendments to Chapter 225" in the subject line may not be considered.

The amendments are proposed pursuant to Texas Government Code, §1232.067, which authorizes the Authority's Board of Directors (Board) to adopt rules necessary for the Board to administer its functions and Texas Government Code, Chapter 1232, the Authority's enabling act. Because the Authority continues to administer the Master Lease Purchase Program, the reasons for the administrative rules in Chapter 225 continue. Accordingly, the Authority asserts that the reason for adoption of these rules continues to exist.

The section affects Texas Government Code, Chapter 1232.

§225.1. Purpose of the Rules.

This chapter concerns [~~The Texas Public Finance Authority proposes these new rules, as Chapter 225, concerning~~] the administration of the Master Lease Purchase Program authorized by Texas Government Code, §1232.103. This chapter defines certain terms pertaining to the operation of the Master Lease Purchase Program, identifies the responsibilities of various parties in administering the Master Lease Purchase Program, and establishes basic procedures under which state agencies may participate in the Master Lease Purchase Program.

§225.3. Definitions.

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

(1) - (17) (No change.)

(18) Lease payments--Those amounts specified in the lease supplements and made pursuant to the comptroller's intercept [~~payable annually on the first day of August~~]. The term "lease payments" also includes all payments and pre-payments, if any, made while the eligible project is in the interim financing.

(19) - (27) (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 February 15, 2013.

TRD-201300664
Susan Durso
General Counsel
Texas Public Finance Authority
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 463-3143

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §452.2

The Texas Veterans Commission (commission) proposes to amend §452.2, relating to Advisory Committees, which is located in Title 40, Part 15 of the Texas Administrative Code.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF SECTION

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed amendment is a revision to allow the advisory committees to select a presiding officer from among the committee members. This revision is in accordance with Texas Government Code, Chapter 2110, regarding State Agency Advisory Committees.

The proposed amendment is authorized under Texas Government Code §434.010, granting the commission the authority to establish rules that it considers necessary for the effective administration of the agency.

PART II. EXPLANATION OF SECTION

§452.2. Advisory Committees.

The proposed amendment to §452.2(a)(3) provides for the advisory committee members to select a chair.

PART III. IMPACT STATEMENTS

Charlie C. Osborne, Jr., Chief Financial Officer, Texas Veterans Commission, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

There will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the proposed amended rule.

There are no anticipated economic costs to persons required to comply with the proposed amended rule.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amended rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Shawn Deabay, Director, Veterans Employment Services, Texas Veterans Commission, has determined that there is no significant negative impact upon employment conditions in the state as a result of the proposed amended rule.

H. Karen Fastenau, General Counsel, Texas Veterans Commission, 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 or administering the amendment will be to ensure compliance with the statute governing state agency advisory committees.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attn: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 463-3288; or emailed to *karen.fastenau@tvc.texas.gov.* For comments submitted electronically, please include "Advisory Committee Rule" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

The amended rule is proposed under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency, and Texas Government Code, Chapter 2110, regarding State Agency Advisory Committees.

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

§452.2. Advisory Committees.

(a) The commission may establish advisory committees in accordance with Texas Government Code, Chapter 2110. The following shall apply to each advisory committee:

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

(3) Committee chair. The chair of each advisory committee is selected annually from among the committee's voting members [~~designated by and serves at the pleasure of the commission~~]. The committee chair determines the agenda for each meeting.

(4) - (9) (No change.)

(b) - (e) (No change.)

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

Filed with the Office of the Secretary of State on February 14, 2013.

TRD-201300627
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: March 31, 2013
For further information, please call: (512) 463-6564

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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 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.223

The Texas Real Estate Commission withdraws the proposed amendment to §535.223 which appeared in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9278).

Filed with the Office of the Secretary of State on February 12, 2013.

TRD-201300586
Kerri T. Galvin
Deputy General Counsel
Texas Real Estate Commission
Effective date: February 12, 2013
For further information, please call: (512) 936-3092

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22 TAC §§535.227 - 535.233

The Texas Real Estate Commission withdraws the proposed repeal of §§535.227 - 535.233 which appeared in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9280).

Filed with the Office of the Secretary of State on February 12, 2013.

TRD-201300584
Kerri T. Galvin
Deputy General Counsel
Texas Real Estate Commission
Effective date: February 12, 2013
For further information, please call: (512) 936-3092

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22 TAC §§535.227 - 535.233

The Texas Real Estate Commission withdraws the proposed new §§535.227 - 535.233 which appeared in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9281).

Filed with the Office of the Secretary of State on February 12, 2013.

TRD-201300585
Kerri T. Galvin
Deputy General Counsel
Texas Real Estate Commission
Effective date: February 12, 2013
For further information, please call: (512) 936-3092

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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 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 203. MANAGEMENT OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

The Texas Department of Information Resources (department) adopts amendments to Chapter 203, §§203.20, 203.25, 203.40, and 203.45, concerning Management of Electronic Transactions and Signed Records. Section 203.25 and §203.45 are adopted with changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9211) and will be republished. Section 203.20 and §203.40 are adopted without changes and will not be republished.

The amendments revise a reference to the Texas Business and Commerce Code, revise text to reflect current American Institute of Certified Public Accountants (AICPA) standards for reporting on controls at a service organization, and clarify that the Approved List of PKI Service Providers applies to certificates which state agencies and institutions of higher education procure or implement.

During the comment period, the department received one comment with revised language from a representative of an institution of higher education, suggesting revision of §203.45(b) to clarify that the Approved List of PKI Service Providers applies to certificates which institutions of higher education procure or implement, rather than accept (new language is italicized, deleted language is bracketed): (b) Institutions of higher education shall only *procure, or otherwise implement,* [accept] certificates from PKI Service Providers that appear on the "Approved List of PKI Service Providers."

The department agrees with, and has incorporated, the revisions to §203.45(b) as well as its companion provision for state agencies, §203.25(b).

SUBCHAPTER B. STATE AGENCY USE OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

1 TAC §203.20, §203.25

The amendments are adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

No other code, article or statute is affected by this adoption.

§203.25. Acceptable PKI Service Providers.

(a) The department shall maintain an "Approved List of PKI Service Providers" authorized to issue certificates for digitally signed communications sent to state agencies or otherwise provide services in connection with the issuance of certificates. The list may include, but shall not necessarily be limited to, Certification Authorities, Certificate Manufacturers, Registrars, and/or other PKI Service Providers accepted and approved for use in connection with electronic messages transmitted to other state or federal governmental entities. A copy of such list may be obtained directly from the department, or may be obtained electronically via the department's website.

(b) State agencies shall only procure, or otherwise implement, certificates from PKI Service Providers that appear on the "Approved List of PKI Service Providers."

(c) The department shall determine whether to place a PKI Service Provider on the "Approved List of PKI Service Providers" after the PKI Service Provider provides the department with a copy of its current certification practice statement, if any, and a copy of an examination report performed in accordance with standards set in the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Attestation Engagement No. 16 (SSAE 16) (or a successor AICPA standard) to ensure that the PKI Service Provider's practices and policies are consistent with the requirements of the PKI Service Provider's certification practice statement, if any, and the requirements of this section.

(d) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for one year or less shall undertake a SSAE 16 Service Organization Control (SOC) 2 Type 1 examination (or a successor AICPA standard) and the results of the examination must be deemed satisfactory by the department.

(e) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for longer than one year shall undertake a SSAE 16 Service Organization Control (SOC) 2 Type 2 examination (or a successor AICPA standard) and the results of the examination must be deemed satisfactory by the department.

(f) In lieu of the examination requirements of subsections (d) and (e) of this section, a PKI Service Provider may be placed on the "Approved List of PKI Service Providers" upon providing the department with documentation issued by a person independent of the PKI Service Provider that is indicative of the security policies and procedures actually employed by the PKI Service Provider and that is acceptable to the department in its sole discretion. The department may request additional documentation relating to policies and practices employed by the PKI Service Provider indicating the trustworthiness of the technology employed and compliance with applicable department guidelines.

(g) To remain on the "Approved List of PKI Service Providers" a Certification Authority must provide proof of compliance with the examination requirements or other acceptable documentation to the department every two years after initially being placed on the list. In addition, a Certification Authority must provide a copy of any changes to its certification practice statement to the department promptly following the adoption by the Certification Authority of such changes.

(h) If the department is informed that a PKI Service Provider is no longer in full compliance following a required examination and the non-compliance is deemed to be material by the department, or if the department obtains credible information that the technology employed by the PKI Service Provider can no longer reasonably be relied upon, the PKI Service Provider may be removed from the "Approved List of PKI Service Providers" by the department. The effect of the removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall be to prohibit state agencies from thereafter accepting digital signatures for which the PKI Service Provider issued a certificate or provided services in connection with such issuance for so long as the PKI Service Provider is removed from the list. The removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall not, in and of itself, invalidate a digital signature for which a PKI Service Provider issued the certificate prior to its removal from the list.

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 February 12, 2013.

TRD-201300590
Martin H. Zelinsky
General Counsel
Department of Information Resources
Effective date: March 4, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 475-4700

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SUBCHAPTER C. INSTITUTIONS OF HIGHER EDUCATION USE OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

1 TAC §203.40, §203.45

The amendments are adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

No other code, article or statute is affected by this adoption.

§203.45. Acceptable PKI Service Providers.

(a) The department shall maintain an "Approved List of PKI Service Providers" authorized to issue certificates for digitally signed communications sent to institutions of higher education or otherwise provide services in connection with the issuance of certificates. The list may include, but shall not necessarily be limited to, Certification Authorities, Certificate Manufacturers, Registrars, and/or other PKI Service Providers accepted and approved for use in connection with electronic messages transmitted to other state or federal governmental entities. A copy of such list may be obtained directly from the department, or may be obtained electronically via the department's website.

(b) Institutions of higher education shall only procure, or otherwise implement, certificates from PKI Service Providers that appear on the "Approved List of PKI Service Providers."

(c) The department shall determine whether to place a PKI Service Provider on the "Approved List of PKI Service Providers" after the PKI Service Provider provides the department with a copy of its current certification practice statement, if any, and a copy of an examination report performed in accordance with standards set in the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Attestation Engagement No. 16 (SSAE 16) (or a successor AICPA standard) to ensure that the PKI Service Provider's practices and policies are consistent with the requirements of the PKI Service Provider's certification practice statement, if any, and the requirements of this section.

(d) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for one year or less shall undertake a SSAE 16 Service Organization Control (SOC) 2 Type 1 examination (or a successor AICPA standard) and the results of the examination must be deemed satisfactory by the department.

(e) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for longer than one year shall undertake a SSAE 16 Service Organization Control (SOC) 2 Type 2 examination (or a successor AICPA standard) and the results of the examination must be deemed satisfactory by the department.

(f) In lieu of the examination requirements of subsections (d) and (e) of this section, a PKI Service Provider may be placed on the "Approved List of PKI Service Providers" upon providing the department with documentation issued by a person independent of the PKI Service Provider that is indicative of the security policies and procedures actually employed by the PKI Service Provider and that is acceptable to the department in its sole discretion. The department may request additional documentation relating to policies and practices employed by the PKI Service Provider indicating the trustworthiness of the technology employed and compliance with applicable department guidelines.

(g) To remain on the "Approved List of PKI Service Providers" a Certification Authority must provide proof of compliance with the examination requirements or other acceptable documentation to the department every two years after initially being placed on the list. In addition, a Certification Authority must provide a copy of any changes to its certification practice statement to the department promptly following the adoption by the Certification Authority of such changes.

(h) If the department is informed that a PKI Service Provider is no longer in full compliance following a required examination and the non-compliance is deemed to be material by the department, or if the department obtains credible information that the technology employed by the PKI Service Provider can no longer reasonably be relied upon, the PKI Service Provider may be removed from the "Approved List of PKI Service Providers" by the department. The effect of the removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall be to prohibit institutions of higher education from thereafter accepting digital signatures for which the PKI Service Provider issued a certificate or provided services in connection with such issuance for so long as the PKI Service Provider is removed from the list. The removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall not, in and of itself, invalidate a digital signature for which a PKI Service Provider issued the certificate prior to its removal from the list.

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 February 12, 2013.

TRD-201300591
Martin H. Zelinsky
General Counsel
Department of Information Resources
Effective date: March 4, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 475-4700

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CHAPTER 207. TELECOMMUNICATIONS SERVICES DIVISION

The Texas Department of Information Resources (department) adopts the repeal of Chapter 207, §§207.1 - 207.8, concerning telecommunications services division, and adopts new Chapter 207, §§207.1 - 207.4, 207.10 - 207.14, and 207.30 - 207.32, concerning telecommunications services, without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8103). The new rules will more accurately reflect legislative actions and resulting changes in the program. The repeal is necessary as the result of passage of House Bill 1705 (81R), effective as of September 1, 2009, in which the legislation repealed §2054.201 and §2054.202 and amended §§2054.091, 2054.203, 2054.204, 2054.205, 2054.2051, and 2054.207, Texas Government Code, concerning the telecommunications planning and oversight council, the basis upon which a section of these rules was originally promulgated. The passage of House Bill 1705 also amended §2170.004, Texas Government Code, concerning the use of Telecommunications Services by assistance organizations, and the new rules reflect that such organizations are now authorized users of state telecommunication services. The department published a formal notice of rule review in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1366).

The department adopts the repeal of Chapter 207 in its entirety and replaces it with a new Chapter 207, Telecommunications Services, to rename rule titles, revise rule language, and allow for the resulting renumbering of the new rules. In addition, consistent with the department's treatment of institutions of higher education, the new rules allow for any differences as to how this rule may apply to either state agencies or institutions of higher education.

In Subchapter A, the department has revised rule titles and language to more accurately reflect the current telecommunications environment. These changes from the repealed language include a provision for network security and will more accurately reflect the State's current telecommunications operations.

In Subchapter B, the department has renumbered previous §207.3 and §§207.5 - 207.8 and has deleted references to institutions of higher education in the previous numbered §207.3 and §207.5. The department has deleted in its entirety the current text of §207.4 to conform to the repeal of the underlying statutory requirement for the telecommunications planning and oversight council. The department has replaced the current text in §207.3 to reference assistance organizations and conform to provisions of House Bill 1705, amending §2170.004, Texas Government Code. The department has also revised language in the previous §207.3 and §§207.5 - 207.8 to reflect revised definitions in the new chapter. Lastly, new §207.11 and §207.14, concerning billing, were revised to more accurately reflect the method by which costs are calculated.

In Subchapter C, the department has created new rules and titles to address Telecommunications Services as applied to Institutions of Higher Education.

No comments were received regarding adoption of the proposed repeal and new rules.

1 TAC §§207.1 - 207.8

The repeal is adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

No other code, article or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2013.

TRD-201300592
Martin H. Zelinsky
General Counsel
Department of Information Resources
Effective date: March 4, 2013
Proposal publication date: October 12, 2012
For further information, please call: (512) 475-4700

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CHAPTER 207. TELECOMMUNICATIONS SERVICES
SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS

1 TAC §§207.1 - 207.4

The new rules are adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

No other code, article or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2013.

TRD-201300593

Martin H. Zelinsky
General Counsel
Department of Information Resources
Effective date: March 4, 2013
Proposal publication date: October 12, 2012
For further information, please call: (512) 475-4700

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SUBCHAPTER B. TELECOMMUNICATIONS SERVICES FOR STATE AGENCIES

1 TAC §§207.10 - 207.14

The new rules are adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

No other code, article or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2013.

TRD-201300594
Martin H. Zelinsky
General Counsel
Department of Information Resources
Effective date: March 4, 2013
Proposal publication date: October 12, 2012
For further information, please call: (512) 475-4700

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SUBCHAPTER C. TELECOMMUNICATIONS SERVICES FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §§207.30 - 207.32

The new rules are adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

No other code, article or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2013.

TRD-201300595
Martin H. Zelinsky
General Counsel
Department of Information Resources
Effective date: March 4, 2013
Proposal publication date: October 12, 2012
For further information, please call: (512) 475-4700

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER T. NOXIOUS AND INVASIVE PLANTS

4 TAC §19.300

The Texas Department of Agriculture (the department) adopts the amendment to §19.300, concerning the list of noxious and invasive plants, with changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9844). The amendment of §19.300(a) is necessary to add a species to the list of noxious and invasive plant species that have serious potential to cause economic or ecological harm to the state.

The department has consulted with representatives from the agricultural industry, the horticulture industry, the Texas Cooperative Extension, the Texas Department of Transportation, the State Soil and Water Conservation Board, and the Texas Department of Parks and Wildlife before adding the *Melia azedarach* (chinaberry) to the list. The department has considered scientific data and the economic impact submitted by the Texas Invasive Plant and Pest Council, affiliated with the National Association of Exotic Pest Plant Councils. By law, the noxious and invasive plants listed may not be sold, distributed, or imported in Texas. The amendment adds chinaberry to the list of noxious and invasive plants, corrects the spelling of Chinese tallow tree, and moves the listing of Japanese climbing fern to place it in alphabetical order. The changes to the proposal are made to correct spelling errors.

No comments were received on the proposal.

The amendment to §19.300 is adopted under the Texas Agriculture Code, §71.151, which authorizes the department to publish by rule a list of noxious and invasive plant species that have serious potential to cause economic or ecological harm to the state.

§19.300. Noxious and Invasive Plant List.

(a) The following plants have serious potential to cause economic or ecological harm to the state.
Figure: 4 TAC §19.300(a)

(b) Unless permitted by the Texas Department of Parks and Wildlife Code §66.007 or by the Texas Department of Agriculture, a person commits an offense under the Texas Agriculture Code §71.152, if the person sells, distributes or imports into the state the plants listed in subsection (a) of this section in any live form.

(c) For the purpose of this section, the term "distributes" does not include the accidental or unintentional movement of noxious plant material in the course of legitimate construction activities or agricultural activities, including but not limited to, re-seeding, transportation of agricultural products and the movement of farm or earth moving equipment.

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 February 12, 2013.

TRD-201300604
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: March 4, 2013
Proposal publication date: December 21, 2012
For further information, please call: (512) 463-4075

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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), adopts amendments to §§33.33, 33.37, and 33.51, concerning consumer complaint notices and receipts that must be issued in relation to money transmission and currency exchange transactions, with changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10069).

The only change to the proposed text in §33.33 is the addition of periods to the abbreviation of the Code of Federal Regulations to make the text consistent with other citations in Chapter 33.

Changes made to the proposed text in §33.37 were made for clarity and efficiency and to maintain consistency with the Texas Code Construction Act. Under Government Code §311.016, the word "shall" is to be construed as imposing a duty. The department therefore removed the word "shall" where its meaning was not intended to impose a duty, in order to avoid confusion and inconsistency. The substantive content of the proposed rule amendment remains unchanged from the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10069).

The only change to the proposed text in §33.51 is the removal of quotation marks around the defined terms, to make the text consistent with style guidelines of the *Texas Register.*

The amended rules prevent conflicts with new federal regulations and correct inconsistencies.

The amendment to §33.33 is adopted to correct the reference to the title of §33.31.

The substantive amendments to §33.37 and §33.51 arise indirectly from the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Dodd-Frank amended the Electronic Fund Transfer Act (EFTA) and brought the EFTA's implementing regulations, Regulation E, under the authority of the Consumer Financial Protection Bureau (CFPB). The change also required the CFPB to implement certain new rules with regard to electronic transfers under the EFTA. As such, the CFPB proposed an amendment to Regulation E known as the Remittance Transfer Rule. The Remittance Transfer Rule, which is expected to become effective later this year, 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 Remittance Transfer Rule may have conflicting regulatory requirements. The amendments to §33.37 and §33.51 provide that a license holder who fully complies with the notice and receipt requirements of the Remittance Transfer Rule is also in compliance with the Texas notice and receipt requirements.

Other changes are made to conform to Texas Register format.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §151.102, which authorizes the commission to adopt rules to administer the Money Services Act.

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

(a) Does this section apply to me? This section applies if you hold a license issued by the department under Finance Code, Chapter 151 (Money Services Act), or are the authorized delegate of a license holder, as applicable, and you conduct currency exchange transactions.

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

(1) For purposes of this section, "receipt" means a receipt, electronic record or other written confirmation.

(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?); and

(B) contains:

(i) the name of your licensed business and the business address or telephone number;

(ii) the unique transaction or identification number;

(iii) the date and amount of the transaction;

(iv) the currency names and total amount of each currency;

(v) the rate of exchange; and

(vi) the amount of fee charged for the transaction;

(3) With respect to a currency exchange transaction you conduct with another financial institution as that term is defined in 31 C.F.R. §1010.100(n) or with a financial institution located outside the United States, you must obtain a contemporaneous receipt for each transaction regardless of where the transaction is conducted. If the other financial institution is a money services business as that term is defined in 31 C.F.R. §1010.100(uu), or a money services business or

financial institution located outside the United States, the receipt must contain:

(A) the date and amount of the transaction;

(B) the currency names and total amount of each currency;

(C) the rate of exchange;

(D) the name and address of the money services business issuing the receipt; and

(E) information sufficient to identify the employee or representative who conducts the transaction for the entity issuing the receipt, such as initials, unique employee or representative code, or other appropriate identifier.

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

(a) Does this section apply to me? This section applies if you hold a money transmission license issued under Finance Code, Chapter 151 (Money Services Act), or are the authorized delegate of a license holder, as applicable.

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

(1) For purposes of this section "receipt" means a receipt, electronic record or other written confirmation. If the customer conducts the transaction online or electronically, the term includes a means by which the customer can save or print a receipt or other record of the transaction that contains the information required under this section.

(2) With respect to a transmission of funds transaction subject to §33.35(e) or a currency transportation transaction subject to §33.35(f) of this title (relating to What Records Must I Keep Related to Money Transmission Transactions?), regardless of the amount of the transaction, you must issue a receipt for each transaction that:

(A) can be linked to the transaction records required under §33.35(e) or (f) of this title, as applicable; and

(B) contains:

(i) the name of your licensed business and the business address and telephone number;

(ii) the unique transaction or identification number;

(iii) the date of the transaction;

(iv) the amount of the transaction in United States dollars; and

(v) the amount of any fee charged for the transaction.

(3) Any receipt issued pursuant to and in full compliance with the Remittance Transfer Rule of Regulation E, 12 C.F.R. Part 1005, Subpart B, satisfies the requirements of paragraph (2) of this subsection.

(4) 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 I Provide Information to My Customers about How to File a Complaint?

(a) Does this section apply to me? This section applies if you hold a money transmission or currency exchange license issued by the department under Finance Code, Chapter 151.

(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) Conspicuously posted--Displayed so that a customer with 20/20 vision can read it from the place where he or she would typically conduct business with you or, alternatively, on a bulletin board, in plain view, on which you post notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.).

(2) Customer--Any person to whom, either directly or through an authorized delegate, you provide or have provided money transmission or currency exchange products or services or for whom you conduct or have conducted a money transmission or currency exchange transaction.

(3) Privacy notice--Any notice regarding a person's right to privacy that you are required to give under a specific state or federal law.

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

(c) Must I provide notice to customers about how to file complaints? Yes. You must tell each of your Texas customers how to file a complaint concerning the money transmission or currency exchange business you conduct under Finance Code, Chapter 151, in accordance with this section.

(d) What must the notice say?

(1) 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: 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) 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) If a state or federal law requires you to send a privacy notice to your customers, you must include the required notice with each privacy notice.

(2) If you maintain a website by which a customer may remit money for transmission or obtain information about you or the customer's transaction or an existing account, you must include the required notice on your website. The notice must be prominently displayed on the initial page the customer uses to initiate the remittance or access the information, or on a page available no more than one link from the initial page. The link must clearly describe the information available by clicking the link, e.g., "Texas customers click here for information about filing complaints about our money transmission or currency exchange product or service."

(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) You may include the required notice in at least 8 point type, on each payment instrument or other access device or receipt used in connection with your money transmission or currency exchange business, provided that:

(i) the payment instrument or other access device constitutes the only means of accessing the money received for transmission; or

(ii) you issue a receipt for every money transmission or currency exchange transaction you conduct.

(B) If you personally receive all the funds paid by your customers, you may conspicuously post the required notice where you conduct money transmission or currency exchange activities with customers on a face to face basis.

(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; or

(ii) if you use an access device, such as a stored value card, in your money services business and mail the device to your customer, you include the required notice in the mailing; and

(iii) if the same access device may be used continuously, such as a reloadable stored value card, you also deliver the required notice to your customer at least once every twelve months. You may include the required notice with a privacy statement, with or on another statement, or by another means so long as the customer actually receives the notice within each twelve-month period.

(4) If your business is entirely internet based, so that account relationships and transactions are initiated solely by means of the internet, the additional disclosures described in paragraph (3) of this subsection are not required.

(f) How do I provide the required notice if I conduct business through authorized delegates?

(1) If you conduct business through one or more authorized delegates, each authorized delegate must provide the required notice by one or more of the methods described in subsection (e)(3) of this section. You must specify the method or methods to be used by your authorized delegate and provide your authorized delegate with the means by which to give the notice you select.

(2) If your authorized delegate personally receives all funds paid by your customers and you require your authorized delegate to post the required notice described in subsection (e)(3)(B) of this section, you may use one posted notice to provide the required notice and the authorized delegate designation required under Finance Code, §151.403(a)(6).

(g) Am I subject to an enforcement action if I do not provide the required notice? Yes. You are subject to enforcement sanctions under Finance Code, Chapter 151, Subchapter H, if you:

(1) fail to provide the required notice in accordance with this section; or

(2) fail to specify the method and provide the means by which your authorized delegate must give the required notice in accordance with subsection (f)(1) of this section.

(h) Is my authorized delegate subject to an enforcement action if the delegate does not provide the required notice? Yes, if you have complied with subsection (f)(1) of this section. If you have specified the method and provided the means by which your authorized delegate must give the required notice, your authorized delegate is subject to enforcement sanctions if the delegate fails to provide the required notice as directed.

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 February 15, 2013.

TRD-201300651
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: March 7, 2013
Proposal publication date: December 28, 2012
For further information, please call: (512) 475-1300

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER O. UNBUNDLING AND MARKET POWER

DIVISION 2. INDEPENDENT ORGANIZATIONS

16 TAC §25.362

The Public Utility Commission of Texas (commission) adopts amendments to §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance, without changes, as published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9564). The purpose of these amendments is to establish that the commission may remove an unaffiliated member of the ERCOT governing board only for "cause." The amendments constitute a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 40862 is assigned to this proceeding.

The commission received comments on the proposed amendments from the Steering Committee of Cities Served by Oncor (Cities).

Proposed subsection (g)

Cities supported the proposed rule's general approach for removal of an unaffiliated member of the ERCOT governing board for cause, but expressed concerns with the grounds for removal

outlined in subsection (g)(5)(D). Cities stated that the proposed language was not consistent with the independence required of unaffiliated directors and therefore should not be adopted in this proceeding. PURA §39.151(g)(7) requires the ERCOT board to include five directors, selected by ERCOT's membership, that are unaffiliated with any market segment. Cities stated that it is unclear why unaffiliated directors elected to provide expertise outside the electric industry would be subject to removal for positions that they may take in disagreement with the commission. Cities commented that adopting the provision would inject uncertainty into the transparency of the ERCOT process and lead outside observers to question whether the independent directors would be expressing independent judgment or following the commission's policy positions. Cities requested that the commission decline to adopt proposed subsection (g)(5)(D).

Commission Response

The commission disagrees with Cities that proposed subsection (g)(5)(D) places an undue burden on the independence required of the unaffiliated ERCOT directors. PURA §39.151(d) provides that: an independent organization certified by the commission is directly responsible and accountable to the commission; the commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that the organization adequately performs the organization's functions and duties; the organization shall fully cooperate with the commission in the commission's oversight and investigatory functions; the commission has complete authority to ensure that the organization adequately performs its functions and duties; and the commission may take appropriate action against an independent organization that does not adequately perform the organization's functions or duties or does not comply with PURA §39.151.

PURA §39.151(g)(7) requires that the board members at issue be unaffiliated with any market segment and selected by the other members of the governing body. PURA in no way requires that these board members be independent of the commission. Although PURA provides that an independent organization such as ERCOT be independent of any particular market segment, PURA expressly provides that the organization is directly responsible and accountable to the commission. Market participants influence the selection of these board members because the other voting board members represent various segments of market participants (other than the independent organization's chief executive officer). However, the independent organization and its board are ultimately directly responsible and accountable to the commission. A board member that is unaffiliated with any market segment cannot fulfill the role contemplated by PURA if that board member has a fundamental disagreement with the commission as to the policies or procedures that ERCOT shall adopt. Under the existing rule, an unaffiliated board member must be approved by the commission before that person can serve on the board. Subsection (g)(5)(D) as proposed is consistent with that provision in that it provides for the commission's removal of an unaffiliated board member if that person cannot fulfill the role contemplated by PURA. The commission therefore adopts the amendments to the rule as proposed.

All comments, including any not specifically referenced herein, were fully considered by the commission.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. In addition, PURA §39.151 provides that: an independent organization certified by the commission is directly responsible and accountable to the commission; the commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that the organization adequately performs the organization's functions and duties; the organization shall fully cooperate with the commission in the commission's oversight and investigatory functions; the commission has complete authority to ensure that the organization adequately performs its functions and duties; and the commission may take appropriate action against an independent organization that does not adequately perform the organization's functions or duties or does not comply with PURA §39.151.

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

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 February 14, 2013.

TRD-201300640
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: March 6, 2013
Proposal publication date: December 7, 2012
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.8

The Texas State Board of Dental Examiners adopts the repeal of §101.8 without changes to the proposal as published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9587).

The repeal is adopted so that SBDE may publish and adopt a new rule addressing Persons with Criminal Backgrounds.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Government Code §2001.021 et seq. and Texas Occupations Code §254.001, which authorize the Board to adopt and enforce rules necessary for it to perform its duties. The adoption of the repeal affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2013.

TRD-201300666
Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: March 7, 2013
Proposal publication date: December 7, 2012
For further information, please call: (512) 463-0977

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22 TAC §101.8

The State Board of Dental Examiners (SBDE) adopts new §101.8, concerning Persons with Criminal Backgrounds, with nonsubstantive changes to the proposed text as published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9587). The rule will be republished.

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

No comments were received regarding adoption of the new rule.

The new rule is adopted pursuant to Texas Government Code §2001.021 et seq. and Texas Occupations Code §254.001, which authorize the SBDE to adopt and enforce rules necessary for it to perform its duties. The adoption of the new rule affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

§101.8. Persons with Criminal Backgrounds.

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

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

(1) a felony;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) a felony offense;

(2) a misdemeanor offense involving fraud;

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

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

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

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

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

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

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

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

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

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

(4) the conduct and work activity of the person before and after the criminal activity, indicating that the person has maintained

steady employment, supported the person's dependents, maintained a record of good conduct, and paid all outstanding court costs, supervision fees, fines, and restitution;

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

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

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

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

This agency hereby certifies that the 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 February 15, 2013.

TRD-201300665
Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: March 7, 2013
Proposal publication date: December 7, 2012
For further information, please call: (512) 475-0977

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CHAPTER 107. DENTAL BOARD PROCEDURES
SUBCHAPTER A. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §§107.66 - 107.68

The State Board of Dental Examiners (SBDE) adopts amendments to §107.66, concerning Modification to Order; §107.67, concerning Review of Modification; and §107.68, concerning Appearances, without changes to the proposed text as published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9589). The rules will not be republished.

The provisions of §107.66 and §107.67 address the process by which a licensee of SBDE may request a modification of a past order of disciplinary action. Section 107.68 addresses the process by which any party may appear before SBDE.

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

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

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

No comments were received regarding adoption of the amendments.

The amendments are adopted 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 adoption of the amendments affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2013.

TRD-201300662
Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: March 7, 2013
Proposal publication date: December 7, 2012
For further information, please call: (512) 475-0977

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 279. INTERPRETATIONS

22 TAC §§279.2, 279.4, 279.16

The Texas Optometry Board adopts amendments to §279.2 and §279.4 and new §279.16 without change to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9244).

The amendments to §279.2 and §279.4 permit the use of electronic signatures for paper ophthalmic prescriptions. New §279.16 establishes requirements for providing telehealth services. The new rule incorporates the requirements imposed by Chapter 111 of the Texas Occupations Code and Chapter 531 of the Texas Government Code. The requirements of the new rule will ensure that patients using telehealth services receive appropriate, quality care, that adequate treatment consent is obtained, and that adequate security of information is maintained. The new rule establishes requirements to prevent fraud and abuse in providing telehealth services.

No comments were received.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.359. The new section is adopted under §351.151 and complies with Texas Occupations Code, §111.002 and §111.003, and Texas Government Code, Chapter 531. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.359 as setting the requirements for an ophthalmic prescription. The agency interprets Texas Occupations Code §111.002 and §111.003 to require telehealth providers to maintain confidentiality and obtain informed consent and Chapter 531 of the Government Code as setting guidelines for telehealth services reimbursed under government-funded health programs.

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 February 12, 2013.

TRD-201300589
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: March 4, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-8502

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 533. PRACTICE AND PROCEDURE

22 TAC §533.3

The Texas Real Estate Commission (TREC) adopts an amendment to §533.3, concerning Filing and Notice, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9277) and will not be republished.

The amendment changes the address to TREC's current address and removes the limitation on the number of pages that may be sent to the commission via facsimile.

The reasoned justification for the rule is to have a correct reference to the agency's address.

No comments were received on the rule as proposed.

The amendment is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendment.

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 February 14, 2013.

TRD-201300628
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: March 6, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 936-3092

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CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER A. DEFINITIONS

22 TAC §535.1

The Texas Real Estate Commission (TREC) adopts an amendment to §535.1, concerning Definitions, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9277) and will not be republished.

The amendment changes the definition of the acronym "SAE" from "Salesperson Annual Education" to "Salesperson Apprentice Education".

The reasoned justification for the rule is consistency with Occupations Code, Chapter 1101, which no longer refers to annual education requirements.

No comments were received on the rule as proposed.

The amendment is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendment.

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 February 14, 2013.

TRD-201300629
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: March 6, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 936-3092

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SUBCHAPTER F. PRE-LICENSE EDUCATION AND EXAMINATION

22 TAC §535.64

The Texas Real Estate Commission (TREC) adopts an amendment to §535.64, concerning Obtaining Approval to Offer a Course, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9278) and will not be republished.

The amendment extends the effective date for expiration of existing courses approved prior to the effective date of the previous revision to December 31, 2014 because the curriculum for such courses has not yet been reviewed by the Education Standards Advisory Committee.

The reasoned justification for the rule is to a have a more thorough review of existing courses before they expire.

No comments were received on the rule as proposed.

The amendment is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendment.

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 February 14, 2013.

TRD-201300630
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: March 6, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 936-3092

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SUBCHAPTER S. RESIDENTIAL RENTAL LOCATORS

22 TAC §535.300

The Texas Real Estate Commission (TREC) adopts an amendment to §535.300, concerning Advertising by Residential Rental Locators, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9292) and will not be republished.

The amendment updates the phone numbers of the Commission and the Standards and Enforcement Services Division that are listed in the required notice in publications where residential rental locators place advertisements.

The reasoned justification for the rule is to have the correct contact information for the agency.

No comments were received on the rule as proposed.

The amendment is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendment.

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 February 14, 2013.

TRD-201300631
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: March 6, 2013
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For further information, please call: (512) 936-3092

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CHAPTER 539. RULES RELATING TO THE RESIDENTIAL SERVICE COMPANY ACT

SUBCHAPTER D. DEFINITIONS

22 TAC §539.31

The Texas Real Estate Commission (TREC) adopts an amendment to §539.1, concerning Residential Service Contract, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9293) and will not be republished.

The amendment to §539.31 defines Chapter 1303 of the Occupations Code as the Act.

The reasoned justification for the rule is to have a short name for the statutory reference.

No comments were received on the rule as proposed.

The amendment is adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendment.

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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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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SUBCHAPTER G. APPLICATIONS AND MAINTENANCE OF LICENSE

22 TAC §§539.61 - 539.66

The Texas Real Estate Commission (TREC) adopts amendments to §539.61 and new §§539.62 - 539.66, concerning Applications and Maintenance of License. Section 539.61 is adopted without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9293) but with changes to the adopted by reference Form No. RSC 1-3. The rule text will be republished. Sections 539.62, 539.63, and 539.66 are adopted with changes to the proposed text and will be republished. Section 539.64 and §539.65 are adopted without changes and will not be republished.

The differences between the rules and forms as proposed are as follows: §539.61 Form No. RSC 1-3 adopted by reference is revised for clarity and to remove typographical errors. New §539.62(a) is moved from §539.71(2) as it fits more appropriately with the other subsections in §539.62. New §539.63 is streamlined by removing redundant references to various rules. New §539.66 is corrected to change a typographical error in the reference to §1303.352(a)(7) of the Act.

The amendment to §539.61, concerning Application for Residential Service Company License, changes the title and deletes subsection (c) because it is moved to new §539.63.

New §539.62, concerning Application to Approve Evidence of Coverage/Schedule of Charges, adopts the form by reference and requires that each approved evidence of coverage must include a form number and approval date. It also requires that a company obtain the commission's prior approval before offering discounts or other change in any amount to be charged a consumer.

New §539.63, concerning Termination of Application, authorizes the commission to terminate an application if the applicant fails to respond within 90 days after the commission notifies the applicant to provide additional information.

New §539.64, concerning Mailing Address and Other Contact Information, requires companies to provide a mailing address, telephone number and email address to the commission, report subsequent changes to such information within 10 days after a change, and deems the last known mailing address provided to the commission to be the address of the company if it fails to update the information.

New §539.65, concerning Change in Company Ownership or Officers, requires a company to report changes in its ownership or officers to the commission on a new form adopted by reference.

New §539.66, concerning Change in Operation, requires a residential service company to notify the commission within 30 days if the company wishes to begin issuing and administering contracts in affiliation with another company. It also requires a company to provide additional information regarding the relationship between the company and the affiliate.

The revisions to the rules and forms as adopted do not change the nature or scope so much that they could be deemed different rules or forms. The rules and forms as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules and forms as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed rules and forms.

The reasoned justification for the rules is enhanced consumer protection for purchasers of residential service contracts.

No comments were received on the rules as proposed.

The amendments and new rules are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendments and new rules.

§539.61. Application for Residential Service Company License.

(a) The Texas Real Estate Commission adopts by reference Application Form RSC 1-3 approved by the commission. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(b) The commission shall assign a license number to each residential service company licensed by the commission.

§539.62. Application to Approve Evidence of Coverage/ Schedule of Charges.

(a) The Texas Real Estate Commission adopts by reference Application to Approve Evidence of Coverage/Schedule of Charges, Form RSC 3-2 approved by the commission. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(b) Each approved evidence of coverage shall be designated by a unique form number and include the commission's approval date.

(c) A discount or any other change in any amount to be charged a consumer by a residential service company for coverage under a residential service contract constitutes a change to a schedule of charges previously approved by the commission. A residential service company must obtain the commission's prior approval of a revised schedule of charges before offering the discount or other price reduction.

§539.63. Termination of Application.

An application for residential service company license or an application to approve evidence of coverage/schedule of charges will be terminated and the commission shall take no further action if the applicant fails to submit a response within 90 days after the commission mails a request to the applicant for curative action.

§539.66. Change in Operation.

If a residential service company wishes to begin issuing and administering contracts in affiliation with another company, the residential service company shall give the commission no less than 30 days written notice before commencing such action. The residential service company shall also provide the commission with copies of any contract and any advertising to be issued or administered by the affiliate. All contracts issued or administered by an affiliate must clearly indicate the relationship between the residential service company and the affiliate. Failure to provide to the commission in a timely manner written notice of affiliation with another company, any contract or any advertising to be issued by the affiliate constitutes a violation of §1303.352(a)(7) of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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SUBCHAPTER H. MISCELLANEOUS FORMS

22 TAC §539.71

The Texas Real Estate Commission (TREC) adopts an amendment to §539.71, concerning Miscellaneous Forms, with changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9294).

The difference from the rule as proposed is that §539.71(2) is moved to new §539.62(a), as it fits more appropriately with the other subsections in §539.62.

The adopted amendment to §539.71 amends Form RSC 8-0 adopted by reference to correct typographical errors in the form.

The revisions to the rules and forms as adopted do not change the nature or scope so much that they could be deemed different rules or forms. The rules and forms as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules and forms as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed rules and forms.

The reasoned justification for the rule is enhanced consumer protection for purchasers of residential service contracts.

No comments were received on the rule as proposed.

The amendment is adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendment.

§539.71. Miscellaneous Forms.

The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These forms are published and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(1) Residential Service Company Bond, Form RSC 2-4;

(2) Notice of Modification, Form RSC 8-0; and

(3) Consent to Service of Process, Form RSC 9-0.

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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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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SUBCHAPTER I. FINANCIAL ASSURANCES

22 TAC §539.81, §539.82

The Texas Real Estate Commission (TREC) adopts an amendment to §539.81 and new §539.82, concerning Financial Assurances, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9295) and will not be republished.

The subchapter title is changed to "Financial Assurances" from "Funded Reserves" to more accurately reflect the contents of the subchapter.

The amendment to §539.81, concerning Funded Reserves, authorizes the commission to accept, with prior authorization, other types of assets, such as government backed instruments, as funded reserves. It also requires companies to complete monthly reconciliations to prove that the company meets the minimum funded reserve requirements of the Act and increase the funded reserve as required.

New §539.82, concerning Security, requires each company to confirm by February 1 of each year that the security required by §1303.154(b) of the Act is sufficient or increase the amount to meet the minimum required.

The reasoned justification for the rule is enhanced consumer protection for purchasers of residential service contracts.

No comments were received on the rules as proposed.

The amendment and new rule are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendment and new 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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TRD-201300635
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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SUBCHAPTER J. ANNUAL REPORT

22 TAC §539.91

The Texas Real Estate Commission (TREC) adopts an amendment to 539.91, concerning Annual Report, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9295) and will not be republished.

The amendment to §539.91, Annual Report, adopts by reference a revised annual report form and requires companies to file an Annual Report by February 1 of each year for the preceding calendar year.

The reasoned justification for the rule is enhanced consumer protection for purchasers of residential service contracts.

No comments were received on the rule as proposed.

The amendment is adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendment.

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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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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SUBCHAPTER N. MID-YEAR REPORT

22 TAC §539.137

The Texas Real Estate Commission (TREC) adopts an amendment to §539.137, concerning Mid-Year Report, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9296) and will not be republished.

The amendment to §539.137 adopts by reference amendments to the Mid-Year Report Form and changes the filing date from August 15 to August 1.

The reasoned justification for the rule is enhanced consumer protection for purchasers of residential service contracts.

No comments were received on the rule as proposed.

The amendment is adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendment.

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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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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SUBCHAPTER Q. ISSUES AFFECTING CONSUMERS

22 TAC §539.160, §539.161

The Texas Real Estate Commission (TREC) adopts new Subchapter Q, §539.160 and §539.161, concerning Issues Affecting Consumers, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9296) and will not be republished.

New §539.160, concerning Copy of Residential Service Company Contract, requires companies to provide a contract holder a copy of a residential service contract within 15 days after payment is made or the residential service contract becomes effective, whichever is sooner.

New §539.161, concerning Advertising, subjects companies to disciplinary action if they use a side-by-side comparison in advertising if the contracts being compared are not substantially the same.

The reasoned justification for the rules are enhanced consumer protection for purchasers of residential service contracts.

No comments were received on the rules as proposed.

The new rules are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the new rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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SUBCHAPTER X. FEES

22 TAC §539.231

The Texas Real Estate Commission (TREC) adopts an amendment to §539.231, concerning Fees, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9297) and will not be republished.

The amendments to §539.231 clarify that the filing fees for an application to approve an evidence of coverage and schedule of charges also applies to changes to an approved evidence of coverage and schedule of charges.

The reasoned justification for the rule is enhanced consumer protection for purchasers of residential service contracts.

No comments were received on the rule as proposed.

The amendment is adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendment.

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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Loretta R. DeHay
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Texas Real Estate Commission
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 106. PERMITS BY RULE

SUBCHAPTER E. AGGREGATE AND PAVEMENT

30 TAC §106.141

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendment to §106.141 *without change* to the proposed text as published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7048) and will not be republished.

Background and Summary of the Factual Basis for the Proposed Rule

Prior to this rulemaking action, there was no standard permit or permit by rule (PBR) specifically designed for medium-sized batch mixing operations commonly used in construction and repair activities. Before the adoption of this amendment, §106.141 authorized equipment with a mixing drum of up to a five cubic feet in capacity. Medium-sized batch mixing operations use drums with a capacity larger than five cubic feet, but are considerably smaller than the facilities authorized by the air quality standard permit for concrete batch plants. The concrete batch plant standard permit authorizes facilities with a production rate of up to 300 cubic yards per hour. Medium-sized batch mixing operations are portable, brought to a site for specific jobs, and designed for rapid production. Because of the small size of these operations, it is appropriate for owners or operators to use this authorization for both temporary and permanent projects. The standard permit registration and public notice process required by Texas Health and Safety Code (THSC), §382.058, Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption, was not designed for a medium-sized batch mixer used in temporary construction and repair operations.

The PBR amendment expands the applicability of §106.141 to include batch mixing operations with drum capacities up to 27 cubic feet. The PBR may not be used to authorize concrete batch plants, which can be authorized under the air quality standard permit for concrete batch plants or a case-by-case new source review (NSR) permit under 30 TAC §116.111, General Application.

Section Discussion

The commission adopts changes to §106.141 that allow medium-sized batch mixers to be authorized with the PBR. In this section, the commission also adopts the addition of specific example products that owners or operators can make with these mixers. The amendment adds paragraphs that include engine size restrictions and best management practices for dust control. As in all PBRs, owners or operators are required to comply with Chapter 106, Subchapter A, General Requirements.

Stakeholders suggested including volumetric trucks in the amendment, but after careful consideration, the commission decided to continue considering volumetric trucks to be mobile sources. Volumetric (or compartmentalized) trucks are prevalent in the concrete industry. These trucks are equipped with a water tank and individual bins for aggregate, cement, and cement supplements (flyash, etc.). These trucks are mainly used for small repair jobs that do not require large amounts of concrete. The agency continues to consider the transporting and mixing by these trucks to be a mobile source activity. However, the loading equipment (cement or cement supplement storage silos) at the home site of these trucks is considered a stationary source, and is subject to permitting requirements. These sources can be authorized using an NSR permit or a PBR. This PBR amendment does not restrict owners or operators from claiming §106.144, Bulk Mineral Handling, when appropriate.

Final Regulatory Impact Determination

The commission reviewed the amendment in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, Regulatory Analysis of Major Environmental Rules, and determined that the amendment does not meet the definition of a major environmental rule as defined in the statute. According to Texas Government Code, §2001.0225, a major environmental rule means "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." While the purpose

of this rulemaking is to increase protection of the environment and reduce risk to human health, it is not expected that this rulemaking will adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, or the public health and safety of the state or a sector of the state. Therefore, no regulatory impact analysis is required.

Furthermore, even if the amendment constituted a major environmental rule, a regulatory impact analysis would not be required because the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The rulemaking does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the rulemaking is designed to meet, not exceed the relevant standard set by federal law; 2) parts of the rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this rulemaking; and 4) the rulemaking is authorized by specific sections of the THSC, Chapter 382 (also known as the Texas Clean Air Act), cited in the Statutory Authority section of this preamble.

The purpose of the PBR amendment is to expand the applicability of §106.141 to more facilities. Before the adoption of this amendment, the PBR authorized batch mixer drums of five cubic feet capacity and smaller. The amended PBR includes batch mixing operations that use equipment larger than a five cubic feet capacity drum but that the commission does not consider concrete batch plants.

The commission invited public comment on the draft regulatory impact analysis determination and received no comments during the public comment period.

Takings Impact Assessment

The commission completed a takings impact assessment for this rulemaking action under Texas Government Code, §2007.043, Takings Impact Assessment. The primary purpose of the rulemaking is to expand a PBR authorization for batch mixers that use equipment larger than a five cubic feet capacity drum but that the commission does not consider concrete batch plants. The expansion of the PBR authorization does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. This rulemaking will not revoke the authorizations of previously authorized facilities. Consequently, this rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5), Definitions.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201, *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program, and found the rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking action is to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing coastal natural resource areas, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone. The amendment will balance economic development with other concerns by limiting batch mixer capacity, limiting engine size, and requiring dust control measures.

The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.32 Policies for Emission of Air Pollutants). Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the rule is consistent with these CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program and did not receive comments during the public comment period.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 106 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, include any changes made using the amended Chapter 106, Permits by Rule requirements into their operating permit.

Public Comment

The commission held a public hearing on October 2, 2012. The comment period closed on October 8, 2012. The commission did not receive any comments.

Statutory Authority

The amendment is adopted under Texas Water Code, §5.103, Rules, and §5.105, General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under Texas Health and Safety Code, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, Permits by Rule, which authorizes

the commission to adopt permits by rule for certain types of facilities; and §382.057, Exemption, which authorizes exemptions from permitting.

The adopted amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

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 February 15, 2013.

TRD-201300642
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: September 7, 2012
For further information, please call: (512) 239-2141

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.22

The General Land Office (GLO) adopts amendments to 31 TAC §15.22, relating to Certification Status of Brazoria County Beach Dune Protection and Beach Access Plan (Plan), without changes to the proposed text as published in the November 23, 2012, issue to the *Texas Register* (37 TexReg 9317). The text of the rule will not be republished.

The amendments to §15.22 modify subsection (b). The amendment deletes the certification of variances in the plan in subsection (b), which is no longer required because they are consistent with current state law. The amendment then adopts a new subsection (b) which certifies as consistent with state law the Plan, as amended by the Erosion Response Plan (ERP), which was adopted by Brazoria County (Brazoria) by order on July 3, 2012 and the Beach User Fee Plan for Quintana Beach County Park and San Luis Pass County Park.

Copies of the adopted Plan or any amendments to the Plan are available from Richard Hurd, Brazoria County Parks Director at (979) 864-1541 and from the GLO's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, phone number (512) 463-5277.

BACKGROUND

Brazoria is a coastal community located along the upper Texas coast. Brazoria includes approximately 20 miles of beach bordering on the Gulf of Mexico. The areas governed by the Plan include those beaches and adjacent areas bordering the Gulf of Mexico located within the County.

Pursuant to §33.607 of the Coastal Public Lands Management Act of 1973 (Texas Natural Resources Code, Chapter 33) and the Beach Dune Rules (31 TAC §15.17) Brazoria has prepared an ERP and submitted it to the GLO for certification as an amendment to its Plan. Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §15.3), a local government with jurisdiction over Gulf beaches must submit its dune protection and beach access plan and any amendments to such a plan to the GLO for certification. Brazoria amended its Plan to include the ERP by order on July 3, 2012. Pursuant to Texas Natural Resources Code §61.011 relating to the imposition of beach access, user or parking fees with respect to public beaches and 31 TAC §15.17, relating to Beach User Fees, Brazoria has also submitted a Beach User Fee Plan. The GLO is required to review such plans and certify by rule those plans that are consistent with the Open Beaches Act, the Dune Protection Act, and 31 TAC Chapter 15. The certification by rule reflects the state's approval of the plan, including the ERP and the Beach User Fee Plan, but the text of the plan is not adopted by the GLO under 31 TAC §15.3(o)(4).

BRAZORIA COUNTY AMENDMENTS

Based on the information provided, Brazoria adopted an ERP and submitted it to the GLO for certification as an amendment to its Plan in accordance with 31 TAC §15.17, 31 TAC §15.3(o) and Texas Natural Resources Code §33.607 and §61.011. Brazoria amended its Plan by order on July 3, 2012 to adopt an ERP. Based on the information provided by Brazoria, the GLO has determined that the ERP is consistent with the Open Beaches Act, the Dune Protection Act, and 31 TAC Chapter 15 and that the requirements of the ERP are incorporated into Brazoria's Plan and procedures for reviewing and approving permit applications.

The GLO has determined that the Beach User Fee Plan submitted by Brazoria is consistent with the Open Beaches Act and Dune Protection Act, specifically Texas Natural Resources Code §61.011 relating to the right of local governments to charge beach access or parking fees with respect to public beaches and 31 TAC §15.7 relating to Beach User Fees. Therefore, the GLO finds that the approved amendments to the Plan are consistent with state law and hereby approves and certifies Brazoria's ERP and Beach User Fee Plan. In addition, the GLO deletes the certification of variances in the plan in subsection (b), which are no longer required because they are consistent with current state law, and adopts a new subsection (b) which certifies the Plan, as amended by the ERP and the Beach User Fee Plan, as consistent with state law.

REASONED JUSTIFICATION

The justification for the adopted amendment is that implementation of an ERP will preserve and enhance dunes, which delays erosion, reduces the intensity of storm surges and increases protection for infrastructure located in coastal areas. Construction standards established in the ERP will increase protection against erosion and storms for structures located within or landward of the dune conservation area. Construction requirements will reduce loss of life and reduce public expenditures associated with damage to and loss of public infrastructure due to erosion, storm damage, and disaster response costs. The identification of restoration areas in the ERP will focus mitigation and restoration efforts in areas that may be vulnerable to storm inundation and are potential avenues for floodwaters that may cause damage to public infrastructure and private properties. The setback

line in the ERP allows for the formation of dunes, which maintains a natural buffer against normal storm tides and allows dune processes to function with minimal disturbance to the dune system and property owners. Preservation of and improvements to foredune ridges protect existing structures and properties against damage from storm surge and reduce the possibility of structures becoming located on state-owned submerged lands, which results in a loss to landowners and increases expenditure of public funds for removal of the unauthorized structures from public beaches. Improvements to beach access points preserve public access and protect against degradation of coastal areas by erosion and storm surge.

The public will benefit from the Beach User Fee Plan because it will provide resources that the County will use to protect and enhance beach dunes and dune vegetation and establish and maintain beach-related services and facilities for the preservation and enhancement of safe access to and from those public beaches by the public.

SUMMARY AND RESPONSE TO COMMENTS

No public comments were received during the 30-day comment period.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendment to §15.22 relating to Certification Status of Brazoria County Beach Dune Protection and Beach Access Plan is subject to the Coastal Management Program (CMP) goals and policies as provided in Texas Natural Resources Code §33.2053(a)(10) and §33.2051(c). The applicable CMP goals and policies are found under 31 TAC §501.11 relating to Goals and §501.26 relating to Policies and Construction in the Beach/Dune System. The GLO reviewed the amendment for consistency and determined that the amendment is consistent with the Beach/Dune regulations and the applicable CMP goals and policies. No comments were received from the public or the Commissioner regarding the consistency determination. Consequently, the GLO has determined that the adopted rule amendment is consistent with the applicable CMP goals and policies.

STATUTORY AUTHORITY

The amendment is adopted under Texas Natural Resources Code §33.607 and §61.011 relating to GLO's authority to adopt rules to preserve and enhance the public's right to access the public beach and reduce public expenditures from erosion and storm damage to public and private property, including public beaches.

Texas Natural Resources Code §§33.601 - 33.613 and §61.015 are affected by the amendments.

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 February 15, 2013.

TRD-201300654

Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: March 7, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 475-1859

31 TAC §15.34

The General Land Office (GLO) adopts amendments to 31 TAC §15.34, relating to Certification Status of Village of Surfside Beach Dune Protection and Beach Access Plan (Plan), without changes to the proposed text as published in the November 23, 2012, issue to the *Texas Register* (37 TexReg 9320). The text of the rule will not be republished.

The amendment adopts a new subsection (b) which certifies as consistent with state law the Plan, as amended by the Erosion Response Plan (ERP), which was adopted by Village of Surfside Beach (Surfside Beach) by resolution on June 29, 2012.

Copies of the adopted Plan or any amendments to the Plan are available from Richard Hurd, Brazoria Parks Director, at (979) 864-1541 and from the GLO's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, phone number (512) 463-5277.

BACKGROUND

Surfside Beach is a coastal community located along the upper Texas coast on Follets Island in Brazoria County and is accessible from the east via County Road 257, Bluewater Highway and from the north via State Highway 332. Surfside Beach includes approximately 3.8 miles of beach bordering on the Gulf of Mexico. The areas governed by the Plan include those beaches and adjacent areas bordering the Gulf of Mexico located within Surfside Beach.

Pursuant to §33.607 of the Coastal Public Lands Management Act of 1973 (Texas Natural Resources Code, Chapter 33) and the Beach Dune Rules (31 TAC §15.17) Surfside Beach has prepared an ERP and submitted it to the GLO for certification as an amendment to its Plan. Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §15.3), a local government with jurisdiction over Gulf beaches must submit its dune protection and beach access plan and any amendments to such a plan to the GLO for certification. Surfside Beach amended its Plan to include the ERP by resolution on June 29, 2012. The GLO is required to review such plans and certify by rule those plans that are consistent with the Open Beaches Act, the Dune Protection Act, and 31 TAC Chapter 15. The certification by rule reflects the state's approval of the plan, but the text of the plan is not adopted by the GLO under 31 TAC §15.3(o)(4).

THE VILLAGE OF SURFSIDE BEACH AMENDMENTS

Surfside Beach adopted an ERP and submitted it to the GLO for certification as an amendment to its Plan in accordance with 31 TAC §15.17, 31 TAC §15.3(o) and Texas Natural Resources Code §33.607 and §61.011. Surfside Beach amended its Plan by resolution on June 29, 2012 to adopt an ERP. Based on the information provided by Surfside Beach, the GLO has determined that the ERP is consistent with the Open Beaches Act, the Dune Protection Act, and the 31 TAC Chapter 15 and that the require-

ments of the ERP are incorporated into Surfside Beach's Plan and procedures for reviewing and approving permit applications. Therefore, the GLO finds that the approved amendments to the Plan are consistent with state law and hereby approves and certifies Surfside Beach's Erosion Response Plan (ERP).

REASONED JUSTIFICATION

The justification for the adopted amendment is that implementation of an ERP will preserve and enhance dunes, which delays erosion, reduces the intensity of storm surges and increases protection for infrastructure located in coastal areas. Construction standards established in the ERP will increase protection against erosion and storms for structures located within or landward of the dune conservation area. Construction requirements will reduce loss of life and reduce public expenditures associated with damage to and loss of public infrastructure due to erosion, storm damage, and disaster response costs. The identification of restoration areas in the ERP will focus mitigation and restoration efforts in areas that may be vulnerable to storm inundation and are potential avenues for floodwaters that may cause damage to public infrastructure and private properties. The setback line in the ERP allows for the formation of dunes, which maintains a natural buffer against normal storm tides, and allows dune processes to function with minimal disturbance to the dune system and property owners. Preservation of and improvements to foredune ridges protect existing structures and properties against damage from storm surge and reduce the possibility of structures becoming located on state-owned submerged lands, which results in a loss to landowners and increases expenditure of public funds for removal of the unauthorized structures from public beaches. Improvements to beach access points preserve public access and protects against degradation of coastal areas by erosion and storm surge.

SUMMARY AND RESPONSE TO COMMENTS

No public comments were received during the 30-day comment period.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendment to §15.34 relating to Certification Status of Village of Surfside Beach Dune Protection and Beach Access Plan is subject to the Coastal Management Program (CMP) goals and policies as provided in Texas Natural Resources Code §33.2053(a)(10) and §33.2051(c). The applicable CMP goals and policies are found under 31 TAC §501.11 relating to Goals and §501.26 relating to Policies and Construction in the Beach/Dune System. The GLO reviewed the amendment for consistency and determined that the amendment is consistent with the Beach/Dune regulations and the applicable CMP goals and policies. No comments were received from the public or the Commissioner regarding the consistency determination. Consequently, the GLO has determined that the adopted rule amendment is consistent with the applicable CMP goals and policies.

STATUTORY AUTHORITY

The amendment is adopted under Texas Natural Resources Code §33.607 and §61.011 relating to GLO's authority to adopt rules to preserve and enhance the public's right to access the public beach and reduce public expenditures from erosion and storm damage to public and private property, including public beaches.

Texas Natural Resources Code §§33.601 - 33.613 and §61.015 are affected by the amendments.

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 February 15, 2013.

TRD-201300655
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: March 7, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 475-1859

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE
SUBCHAPTER A. FEES
DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.14

In a duly noticed meeting on January 24, 2013, the Texas Parks and Wildlife Commission adopted an amendment to §53.14, concerning Deer Management and Removal Permits, without changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9858). The department simultaneously adopts amendments to Chapter 65, Subchapter T (§§65.602, 65.603, 65.605, 65.608, and 65.610), published elsewhere in this issue of the *Texas Register,* in which the department mandates that all deer breeders submit required reports and notifications via an Internet-based system.

The current fee for a deer breeder permit or renewal is $400; however, the rules also provide for a reduced fee of $200 for deer breeders who submit at least 85% of specified reports and permit activations via the department's Internet-based system. With the adoption of the amendments to Chapter 65, Subchapter T referenced earlier, all deer breeders will qualify for the reduced permit/renewal fee, since all reporting and notification will be required to be submitted via the Internet. Therefore, the practical effect of requiring all reporting to be done via the Internet is to reduce the permit/renewal fee to $200.

The department received no comments concerning adoption of the proposed rule.

No groups or associations commented in support of or opposition to adoption of the proposed rules.

The amendment is adopted under Parks and Wildlife Code, §43.357, which authorizes the commission to promulgate rules governing deer breeder permits, including fees and reporting requirements.

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 February 13, 2013.

TRD-201300611
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: March 5, 2013
Proposal publication date: December 21, 2012
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE
SUBCHAPTER T. DEER BREEDER PERMITS
31 TAC §§65.602, 65.603, 65.605, 65.608, 65.610

In a duly noticed meeting on January 24, 2013, the Texas Parks and Wildlife Commission adopted amendments to §§65.602, 65.603, 65.605, 65.608, and 65.610, concerning Deer Breeder Permits. Section 65.602 and §65.608, concerning Annual Reports and Records, are adopted with changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9861). Sections 65.603, 65.605, and 65.610 are adopted without changes and will not be republished.

The change to §65.602, concerning Permit Requirement and Permit Privileges; General Provisions, adds an exception to the provisions of subsection (a), which is necessary in order to prevent conflict with proposed new §65.905, published in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1123), which, if adopted, would stipulate the conditions under which persons may possess white-tailed or mule deer in Texas without a permit issued by the department under Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, or R.

The change to §65.608 eliminates the word "legible" in subsection (a). Since the rules as adopted require reports and notifications (with the exception of the activation of a transfer permit, which may be activated by phone) to be filed via the department's Internet-based deer breeder application, legibility is no longer a limiting factor.

Current rules allow for permit applications and renewals, reports, notifications, and similar required interactions with the department to be conducted either electronically or manually. In response to an increasing number of deer breeders and an increasing number of reporting errors, the department in 2005 created an Internet-based application for reporting and recordkeeping. Deer breeder permit holders are not currently required to use the Internet-based application, but they were offered an incentive do so in 2010 when the department implemented Parks and Wildlife Code, §43.369, as added by Senate Bill 1586 (2009), which required the department and the Texas Animal Health Commission (TAHC) to develop a process for a shared database to include reporting data provided by deer breeders. Section 43.369 also requires the Texas Parks and Wildlife Commission (the Commission) to provide incentives to deer breeders whose cooperation resulted in reduced costs and increased efficiencies. The Commission promulgated rules that provide for a fee reduction of 50% for deer breeder permittees who submitted at least 85% of the required reports and notifications via the Internet. Specifically, the current deer breeder and deer breeder annual renewal fee is $400, but for deer breeder permittees who submit at least 85% of the required reports and notifications via the Internet, the fee is $200. Increased utilization of the Internet-based application has resulted in increased efficiency in program administration; however, the department continues to receive numerous hard-copy reports that are laden with errors, requiring thousands of man hours to reconcile. Reconciliation of hard-copy reports is an arduous process that hampers the department's ability to address the needs of compliant permittees in a timely fashion. On this basis, the department has concluded that making the use of the Internet-based application mandatory is warranted. An amendment to §53.14 (published elsewhere in this issue) eliminates the $400 annual fee, since hard-copy reporting is being eliminated and all breeders will therefore be paying a $200 annual fee.

The online system is designed to (1) significantly reduce reporting errors, (2) provide for more efficient means of herd inventory reconciliation, and (3) make data more immediately available to department regulatory and enforcement personnel. Hard-copy reports, which are manually entered by staff, frequently contain erroneous information and/or omissions, which require substantial amounts of staff time to rectify. Because online reporting cannot be successfully completed until all required information has been entered and reconciled by the system against existing historical user data, staff time spent on manual data entry/data reconciliation would be significantly reduced and perhaps eliminated if all reporting were required to be completed online.

The amendments to §65.602, concerning Permit Requirement and Permit Privileges; General Provisions; §65.603, concerning Application and Permit Issuance; §65.605, concerning Facility Holding Standards and Care of Deer; §65.608, concerning Annual Reports and Records; and §65.610, concerning Transfer of Deer, make the changes necessary to require all reporting and notifications to be done via the department's Internet-based application.

The amendment to §65.602 retitles the section and adds new subsection (c) to require all permit applications, permit renewals, notifications, reporting, and recordkeeping to be submitted via an Internet-based deer breeder application provided by the department, unless otherwise provided in the subchapter or in the permit conditions. Although it is the department's intent that all permit applications, permit renewals, notifications, reporting, and recordkeeping be submitted via the Internet application, the department also recognizes that there may be extenuating circumstances, such as a system application problem, that could require an alternative means of submittal.

The amendment to §65.603 alters subsection (e) to remove language authorizing the submission of authorized agent and facility plan information by fax or mail and adds language to subsection (e) to create validation mechanisms for the submission of that information via the deer breeder Internet application.

The amendments to §65.605 and §65.608 remove language referring to paper forms supplied by the department.

The amendment to §65.610 alters subsection (e)(3) to refer to the deer breeder Internet application, create a mechanism for the validation of submission of transport permit activation, and create an offense for any person to transport a deer under a transport permit unless the person also possesses a notification confirmation number issued by the department for that instance of transport. The amendment does not eliminate the option for transfer permits to be activated by phone. Under Parks and Wildlife Code, §43.367, it is an offense for any person to violate a regulation of the commission promulgated under Parks

and Wildlife Code, Chapter 43, Subchapter L. The rule as currently worded requires notification to the department prior to the movement of deer under a transport permit. The amendment creates a mechanism for the permittee to verify that the required notification took place. The amendment to §65.610 also alters subsection (e)(5) to remove references to paper forms and fax submissions.

The department received two comments supporting adoption of the proposed rules.

The department received no comments opposing adoption of the proposed rules.

The Texas Deer Association commented in support of adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, §11.027(b) which authorizes the department to establish fees to cover costs associated with the review of applications for permits required by the Park and Wildlife Code, §43.357, which authorizes the commission to make rules governing the possession of breeder deer; permit applications and fees; reporting requirements; procedures and requirements for the purchase, transfer, sale, or shipment of breeder deer; and §43.359, which requires a deer breeder to maintain an accurate and legible record of all breeder deer acquired, purchased, propagated, sold, transferred, or disposed of and any other information required by the department, and to report that information to the department as the commission by rule may require.

§65.602. Permit Requirement and Permit Privileges; General Provisions.

(a) Except as provided in this chapter, no person may possess a live deer in this state unless that person possesses a valid permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R.

(b) Except as otherwise provided by this subchapter, a person who possesses a valid deer breeder's permit may:

(1) engage in the business of breeding legally possessed breeder deer within the facility for which the permit was issued;

(2) purchase or otherwise lawfully take possession of breeder deer lawfully possessed by another deer breeder;

(3) sell or transfer breeder deer that are in the legal possession of the permittee;

(4) release breeder deer from a permitted facility into the wild as provided in this subchapter;

(5) recapture lawfully possessed breeder deer that have been marked in accordance with Parks and Wildlife Code, §43.3561 that have escaped from a permitted facility;

(6) temporarily relocate and hold breeder deer in accordance with the applicable provisions of §65.610 of this title (relating to Transfer of Deer); and

(7) temporarily relocate and recapture buck breeder deer under the provisions of Subchapter D of this chapter (relating to Deer Management Permit).

(c) Unless specifically provided otherwise in this subchapter or the conditions of permit, all permit applications, permit renewals, notifications, reporting, and recordkeeping required by this subchapter shall be submitted electronically via the department's Internet-based deer breeder application.

§65.608. Annual Reports and Records.

(a) Each deer breeder shall file a completed annual report by not later than May 15 of each year.

(b) A person other than a deer breeder holding breeder deer for nursing, breeding, or health care purposes shall maintain and, upon request, provide copies of transfer permits indicating the source of all breeder deer in the possession of that person.

(c) The reduced fee for renewal of a deer breeder permit specified in §53.14(a)(2) of this title (relating to Deer Management and Removal Permits) shall apply to any permittee who, in the year prior to renewal, has reported via the department's online reporting system at least 85% of the following (in the aggregate):

(1) births and deaths of deer held under the permit; and

(2) transfer permits activated by the permittee.

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 February 13, 2013.

TRD-201300612
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: March 5, 2013
Proposal publication date: December 21, 2012
For further information, please call: (512) 389-4775

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 450. VETERANS COUNTY SERVICE OFFICERS CERTIFICATE OF TRAINING

40 TAC §450.3

The Texas Veterans Commission (commission) adopts the amendment to §450.3, relating to General Provisions, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9333) and will not be republished.

The adopted amendment is a minor revision to §450.3(i) to reflect that inquiries about Veterans County Service Officer certification of training should be directed to and answered by the Director, Claims Representation and Counseling. The point of contact that is currently in the rule is a position that no longer exists in the agency.

No comments were received regarding the proposed rule amendment.

The amendment is adopted under Texas Government Code §434.010, granting the commission the authority to establish rules, and Texas Government Code §434.038, granting the commission the authority to establish rules to carry out the

purposes of Veterans County Service Officer Training and Certification.

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 February 15, 2013.

TRD-201300643
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Effective date: March 7, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 463-6564

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CHAPTER 451. VETERANS COUNTY SERVICE OFFICERS ACCREDITATION

40 TAC §451.3

The Texas Veterans Commission (commission) adopts the amendment to §451.3, relating to General Provisions, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9334) and will not be republished.

The adopted amendment is a minor revision to §451.3(j) to reflect that inquiries about Veterans County Service Officer accreditation should be directed to and answered by the Director, Claims Representation and Counseling. The point of contact that is currently in the rule is a position that no longer exists in the agency.

No comments were received regarding the proposed rule amendment.

The amendment is adopted under Texas Government Code §434.010, granting the commission the authority to establish rules, and Texas Government Code §434.038, granting the commission the authority to establish rules to carry out the purposes of Veterans County Service Officer Training and Certification.

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 February 15, 2013.

TRD-201300644
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Effective date: March 7, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 463-6564

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CHAPTER 460. FUND FOR VETERANS' ASSISTANCE PROGRAM
SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM

40 TAC §460.2

The Texas Veterans Commission (commission) adopts the amendment to §460.2, relating to Definitions, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9335) and will not be republished.

The adopted amendment to the definition of §460.2(9), Received by the Agency, will enable the Fund for Veterans' Assistance to receive electronic documents and will eliminate different document delivery addresses for those documents submitted by U.S. Mail, overnight delivery, hand delivery, or courier service.

No comments were received regarding the proposed rule amendment.

The amendment is adopted under Texas Government Code §434.010, which authorizes the commission to establish rules that it considers necessary for the effective administration of the agency, and Texas Government Code §434.017, which authorizes the commission to establish rules governing the award of grants by the commission.

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 February 15, 2013.

TRD-201300645
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Effective date: March 7, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 463-6564

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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

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 55, Lump Sum Payments.

Chapter 55. Lump Sum Payments.

§55.3. Request for Advanced Payment of Compensation.

§55.5. Lump Sum Payments.

§55.10. Settlements Final When Approved.

§55.15. Compromise Settlement Agreements.

§55.20. Execution of Compromise Settlement Agreement.

§55.25. Loss of an Eye.

§55.30. Hearing Impairment.

§55.35. Stipulation of Medical Payments.

§55.40. Attorney's Signature.

§55.45. Percent of Medical Impairment.

§55.50. Attorneys Fees and Expenses.

§55.55. Compromise Settlement Agreement To Set Aside Award.

§55.60. Consent Withdrawn.

§55.65. Withdrawal of Consent by Death.

§55.75. Tender Payment Time Period.

§55.80. Waiving of Approval Appearance.

The Division 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 accordance with the Administrative Procedures Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted by 5:00 p.m. CST April 1, 2013. Comments may be submitted by email at RuleReviewComments@tdi.texas.gov or by mailing or delivering your comments to Maria Jimenez, Office of Workers' Compensation Counsel, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201300720
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: February 20, 2013

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The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 56, Structured Compromise Settlement Agreements.

Chapter 56. Structured Compromise Settlement Agreements.

§56.5. Definitions.

§56.10. Form.

§56.15. Execution.

§56.20. Personal Appearance by Claimant.

§56.25. Medical Benefits.

§56.30. Consent of Parties--Withdrawal.

§56.35. Attorney's Signature.

§56.40. Attorney's Fees and Expenses.

§56.45. Tender Payment Time Period.

§56.50. Final When Approved.

§56.55. Annuity Company.

§56.60. Payments Guaranteed.

§56.65. Cost of the Annuity.

§56.70. Structured Settlement Agreement To Set Aside Award.

The Division 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 pro-

posed and published in the *Texas Register* in accordance with the Administrative Procedures Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted by 5:00 p.m. CST April 1, 2013. Comments may be submitted by email at RuleReviewComments@tdi.texas.gov or by mailing or delivering your comments to Maria Jimenez, Office of Workers' Compensation Counsel, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201300721
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: February 20, 2013

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The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 57, Request for Case Folders and Certifications of Actions of the Board.

Chapter 57. Request for Case Folders and Certifications of Actions of the Board.

§57.5. Request for Copies or Statistical Information.

§57.10. Written Request for Public Information.

§57.15. Telephone Request for Public Information.

The Division 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 accordance with the Administrative Procedures Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted by 5:00 p.m. CST April 1, 2013. Comments may be submitted by email at RuleReviewComments@tdi.texas.gov or by mailing or delivering your comments to Maria Jimenez, Office of Workers' Compensation Counsel, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201300722
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: February 20, 2013

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Texas Public Finance Authority

Title 34, Part 10

The Texas Public Finance Authority (the Authority) files this notice of intention to review 34 TAC Chapter 223, §223.1, concerning Historically Underutilized Businesses. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether this rule should be repealed, re-adopted, or re-adopted with changes must be received within 30 days and may be submitted by email to General Counsel Susan Durso at *susan.durso@tpfa.state.tx.us* or by mail to Texas Public Finance Authority, 300 W. 15th Street, Suite 411, Austin, Texas 78701. To ensure consideration, comments must clearly specify the particular part of the section to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate. If submitted electronically the subject line should state "Rule review comments Chapter 223." Failure to adhere to these requirements may result in no consideration for the comments.

TRD-201300661
Susan Durso
General Counsel
Texas Public Finance Authority
Filed: February 15, 2013

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Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of Chapter 97, §97.101 (Meetings), §97.102 (Delegation of Duties), §97.103 (Recusal or Disqualification of Commission Members), §97.104 (Petitions for Adoption or Amendment of Rules), §97.105 (Frequency of Examination), §97.107 (Related Entities), §97.113 (Fees and Charges), §97.114 (Charges for Public Records), §97.115 (Reimbursement of Legal Expenses), §97.116 (Recovery of Costs for Extraordinary Services Not Related to an Examination), §97.200 (Employee Training Program), §97.205 (Use of Historically Underutilized Businesses), §97.300 (Gifts of Money or Property), and §97.401 (General Requirements), as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9371). The Commission proposes to readopt these rules.

The rules were reviewed as a result of the Credit Union Department's (Department) general rule review.

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting §§97.101 - 97.105, 97.107, 97.113 - 97.115, 97.116, 97.200, 97.205, 97.300, and 97.401 continue to exist and readopts these rules without changes pursuant to the requirements of Government Code, §2001.039.

TRD-201300652
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 15, 2013

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State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 241, Principal Certificate, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 241 in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8605).

Relating to the review of 19 TAC Chapter 241, the SBEC finds that the reasons for adoption continue to exist and readopts the rules. It is anticipated that Texas Education Agency (TEA) staff will present changes to 19 TAC Chapter 241 for discussion and action at a future meeting to clarify the rules and incorporate current SBEC policy and procedures. The TEA staff anticipate conducting a stakeholder meeting prior to presenting changes to the SBEC.

The SBEC received no comments related to the rule review of 19 TAC Chapter 241.

This concludes the review of 19 TAC Chapter 241.

TRD-201300716
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: February 20, 2013

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The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 242, Superintendent Certificate, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 242 in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8605).

Relating to the review of 19 TAC Chapter 242, the SBEC finds that the reasons for adoption continue to exist and readopts the rules. It is anticipated that Texas Education Agency (TEA) staff will present changes to 19 TAC Chapter 242 for discussion and action at a future meeting to clarify the rules and incorporate current SBEC policy and procedures. The TEA staff anticipate conducting a stakeholder meeting prior to presenting changes to the SBEC.

The SBEC received no comments related to the rule review of 19 TAC Chapter 242.

This concludes the review of 19 TAC Chapter 242.

TRD-201300717
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: February 20, 2013

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Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) published its notice of intent to review its Chapter 253 rules in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8606).

No comments were received regarding CSEC's notice of review.

Based on its statutory review, CSEC has determined that the reasons for initially adopting the rules continue to exist. Accordingly, CSEC re-adopts without amendment §§253.1, 253.2, 253.3 and 253.4, concerning practice and procedure.

TRD-201300726
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: February 20, 2013

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Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 TAC Chapter 57, For-Profit Legal Service Contract Companies. The Notice of Intent to Review was published in the November 16, 2012, issue of the *Texas Register* (37 TexReg 9145). A subsequent notice was published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9826), which extended the public comment period until January 4, 2013.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the For-Profit Legal Service Contract Companies program under Texas Occupations Code, Chapter 953, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 953, Regulation of For-Profit Legal Service Contract Companies. Several sections of this chapter require or allow rules to be adopted in order to implement this chapter or specific sections of this chapter. These sections include: §953.005, Rules; §953.056, Modification of Registration Information; §953.057, Renewal of Registration; and §953.162, Appointments and Responsibilities of Administrator. The current rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the registration and renewal requirements, the registrants' responsibilities, and the fees that are specific to this program. The Department received public comments in response to the Notice of Intent to Review from two (2) interested parties.

The first commenter expressed support for legal service contracts and the benefits to persons purchasing such contracts. The commenter stated that the rules reflect the current legal and policy requirements and the current procedures of the Department. The second commenter expressed concerns that persons marketing legal service products have to be licensed. The commenter stated that the license requirement adds a burden to the state and serves as a barrier for those who want to market legal service products. The commenter stated that it was important to review the companies providing the services and their solvency, but not the individuals. In response to the second public comment, the requirement for sales representatives to register with the Department is a statutory requirement, and this is not an issue that can be addressed by rulemaking. These comments will be taken under consideration as part of any possible rule changes in the future.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 57, For-Profit Legal Service Contract Companies, in their current form at its meeting on January 30, 2013. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC Chapter 57, For-Profit Legal Service Contract Companies.

TRD-201300667
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: February 15, 2013

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The Texas Department of Licensing and Regulation (TDLR or Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 TAC Chapter 59, Continuing Education Requirements. The Notice of Intent to Review was published in the November 16, 2012, issue of the *Texas Register* (37 TexReg 9145). A subsequent notice was published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9826), which extended the public comment period until January 4, 2013.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Continuing Education Requirements under Texas Occupations Code, Chapter 51, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation. The administrative rules under 16 TAC Chapter 59 provide details that are not found in the statute but are necessary for the operation of the Commission and the Department. The Department received public comments in response to the Notice of Intent to Review from nine (9) interested parties.

A representative of Southwest Tow Operators endorsed the current rules as consistent with the current laws and necessary to uphold proper statutory educational requirements. A representative of Jade Learning stated that continuing education is a vital part of trade licensure and that continuing education courses should continue to be approved by TDLR to ensure quality and subject matter coverage.

ISF, a management consulting and information technology firm recommended adding the following rule language to continuing education requirements:

§59.91. Public Private Partnership. The Department or Commission shall have the authority to outsource business functions using a public-private partnership model to best serve providers and licensees.

§59.92. Mandatory Use of an Automated Continuing Education Tracking System. All licensees and providers must subscribe to and/or use an automated continuing education tracking system to monitor and report status.

Some commenters were opposed to the rules in general, and these comments are summarized as follows: one commenter, a cosmetology salon owner, stated that there is no reason to require continuing education because some people will comply with laws and rules and some people will not. There were two comments from members of the air conditioning and refrigeration contractors industry both suggesting that continuing education be abolished due to hard economic times and because running a business is time consuming, stressful and expensive without unnecessary continuing education requirements. One commenter stated that after 62 years of age, license holders should not be required to take continuing education. Two electricians commented that while continuing education classes are beneficial, requiring them annually is excessive and the requirement should be changed to every three years to coincide with publication of the National Electrical Code. These comments will be taken under consideration as part of any possible rule changes in the future.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 59, Continuing Education Requirements, in their current form at its meeting on January 30, 2013. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC Chapter 59, Continuing Education Requirements.

TRD-201300668
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: February 15, 2013

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The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 TAC Chapter 60, Procedural Rules of the Commission and the Department. The Notice of Intent to Review was published in the November 16, 2012, issue of the *Texas Register* (37 TexReg 9146). A subsequent notice was published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9827), which extended the public comment period until January 4, 2013.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Procedural Rules of the Commission and the Department under Texas Occupations Code, Chapter 51, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation. The rules provide details that are not found in the statute but are necessary for implementation and operation of Department programs. For example, the rules detail general Commission and Executive Director powers and duties, rulemaking procedures, and contested case procedures that are necessary for the operation of all Department programs. In addition, Texas Occupations Code §51.201 specifically requires that rules be adopted to implement that chapter. The Department received public comments in response to the Notice of Intent to Review from three (3) interested parties.

One comment actually relates to another rule review, for the Electricians program, and will be addressed as part of that rule review. One comment generally supports the current Chapter 60 rules but recommends that the time frame for filing complaints in §60.200 be reevaluated based on the type of work performed by license holders. This comment will be taken under consideration as part of any possible rule changes in the future. Another comment addresses rule provisions in the Barbering and Cosmetology programs, rather than the Chapter 60 rules, and is therefore outside the scope of this rule review.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 60, Procedural Rules of the Commission and the Department, in

their current format at its meeting on January 30, 2013. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC Chapter 60, Procedural Rules of the Commission and the Department.

TRD-201300669
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: February 15, 2013

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The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 TAC Chapter 65, Boilers. The Notice of Intent to Review was published in the November 16, 2012, issue of the *Texas Register* (37 TexReg 9146). A subsequent notice was published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9827), which extended the public comment period until January 4, 2013.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Boilers program under Texas Health and Safety Code, Chapter 755, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Health and Safety Code, Chapter 755, Boiler Law. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the registration/licensing requirements and the fees that are specific to this program. In addition, Texas Health and Safety Code §755.032 specifically requires that rules be adopted for this program. The Department received public comments in response to the Notice of Intent to Review from two (2) interested parties.

One comment suggest the Texas Commission of Licensing and Regulation (Commission) reconcile Chapter 65 with the Texas Air Code §117.463 related to pool heaters. The Commission notes that Chapter 65 is currently undergoing a major rewrite by Department staff. If necessary, this issue will be addressed during the rewrite of Chapter 65.

The Commission, the Department's governing body, readopted the rules at 16 TAC Chapter 65, Boilers, in their current form at its meeting on January 30, 2013. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC Chapter 65, Boilers.

TRD-201300670
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: February 15, 2013

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The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 TAC Chapter 70, Industrialized Housing and Buildings. The Notice of Intent to Review was published in the November 16, 2012, issue of the *Texas Register* (37 TexReg 9147). A subsequent notice was published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9827), which extended the public comment period until January 4, 2013.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Industrialized Housing and Buildings (IHB) program under Texas Occupations Code, Chapter 1202, were scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the registration/licensing requirements and the fees that are specific to this program. In addition, Texas Occupations Code §1202.101 specifically requires that rules be adopted for this program. The Department received public comment in response to the Notice of Intent to Review from one (1) interested party.

The Department received one comment from T.R. Arnold & Associates, Inc. regarding 16 TAC §70.23(c)(3), requesting that an option for a housing plan reviewer be included in the rules. This would require discussion and recommendation from the IHB Council, and the department will consider this and other rule review matters when the Council meets again in furtherance of this rule review.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 70, Industrialized Housing and Buildings, in their current form at its meeting on January 30, 2013. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC Chapter 70, Industrialized Housing and Buildings.

TRD-201300671
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: February 15, 2013

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The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 TAC Chapter 72, Staff Leasing Services. The Notice of Intent to Review was published in the November 16, 2012, issue of the *Texas*

Register (37 TexReg 9148). A subsequent notice was published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9827), which extended the public comment period until January 4, 2013.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Staff Leasing Service program under Texas Labor Code, Chapter 91, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Labor Code, Chapter 91, Staff Leasing Services. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the registration/licensing requirements and the fees that are specific to this program. In addition, Labor Code §91.002 specifically requires that rules be adopted for this program. The Department received public comment in response to the Notice of Intent to Review from one (1) interested party.

The Department received one public comment (filed on two dates) regarding §72.40(a)(3) from an individual CPA with Edgar, Kiker & Cross, CPAs. The comment expressed concern that the requirement for an audited financial statement's costs outweighs its usefulness in providing financial assurance. The requirement for the audited statement is in the statute, Labor Code §91.014, specifically. Therefore any change to the rule would require a statutory change. This comment will be considered when the department meets in furtherance of this rule review.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 72, Staff Leasing Service, in their current form at its meeting on January 30, 2013. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC Chapter 72, Staff Leasing Services.

TRD-201300672
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: February 15, 2013

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The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 TAC Chapter 73, Electricians. The Notice of Intent to Review was published in the November 16, 2012, issue of the *Texas Register* (37 TexReg 9148). A subsequent notice was published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9827), which extended the public comment period until January 4, 2013.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Electricians program under Texas Occupations Code, Chapter 1305, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 1305, Electricians. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the registration/licensing requirements and the fees that are specific to this program. In addition, Texas Occupations Code §1305.102 specifically requires that rules be adopted for this program. The Department received public comment in response to the Notice of Intent to Review from sixteen (16) interested parties.

Many of the 16 comments received in response to the notice address issues in statute. Two comments address an earlier-expired proposed rule change for on-site supervision. One comment advocates that an electrical contractor not be able perform the duties of an electrician sign contractor. One comment advocates a minimum exam for electrical contractors. Two comments address advertising provisions. Two comments advocate credit for work experience not gained under the supervision of a master electrician. One comment asks about procedures for documentation of experience hours. One commenter advocates a time limitation for apprentice licenses and addresses licensure for installers of burglar and fire alarms. One comment asks that late renewal be extended. One comment advocates that production crews be required to have a contractor's license. One comment questions if there is a ratio for apprentices. One commenter questions if the law and rules for professional engineers conflict with the rules for master electricians over the ability to design an electrical system. One comment advocates that the rule for temporary apprentices is discriminatory for it does not allow temporary licensure of applicants that have been convicted of a criminal offense. One comment simply states the rules have been costly and ineffective and advocates removal of the rules in full or modification. These comments will be considered when the Department meets in furtherance of this rule review.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 73, Electricians, in their current form at its meeting on January 30, 2013. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC Chapter 73, Electricians.

TRD-201300673
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: February 15, 2013

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The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 TAC Chapter 85, Vehicle Storage Facilities. The Notice of Intent to Review was published in the November 16, 2012, issue of the *Texas Register* (37 TexReg 9149). A subsequent notice was published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9828), which extended the public comment period until January 4, 2013.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Vehicle Storage Facilities program under Texas Occupation Code, Chapter 2308, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 2303, Vehicle Storage Facilities. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the registration/licensing requirements and the fees that are specific to this program. In addition, Occupations Code §2303.051 specifically requires that rules be adopted for this program. The Department received public comments in response to the Notice of Intent to Review from two (2) interested parties.

One comment suggested the elimination of all rules not related to registration and safety issues. The Commission believes that most of the rules relate to registration and safety. The balance of the rules implement statutory requirements which the Commission is required to implement. The second set of comments related to request for statutory changes or issues which the commission addressed in previous rulemakings intended to minimize regulation of the vehicle storage industry.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 85, Vehicle Storage Facilities, at its meeting on January 30, 2013, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC Chapter 85, Vehicle Storage Facilities.

TRD-201300674
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: February 15, 2013

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The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 TAC Chapter 86, Vehicle Towing and Booting. The Notice of Intent to Review was published in the November 16, 2012, issue of the *Texas Register* (37 TexReg 9150). A subsequent notice was published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9828), which extended the public comment period until January 4, 2013.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Vehicle Towing and Booting program under Texas Occupation Code, Chapter 2308, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 2308, Vehicle Towing and Booting. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the registration/licensing requirements and the fees that are specific to this program. In addition, Occupations Code §2308.057 specifically requires that rules be adopted for this program. The Department received public comments in response to the Notice of Intent to Review from two (2) interested parties.

One comment suggested the elimination of all rules not related to registration and safety issues. The Commission believes that most of the rules relate to registration and safety. The balance of the rules implement statutory requirements which the Commission is required to implement. The second set of comments related to request for statutory changes or issues which the commission addressed in previous rulemakings intended to minimize regulation of the vehicle towing industry.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 86, Vehicle Towing and Booting, at its meeting on January 30, 2013, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC Chapter 86, Vehicle Towing and Booting.

TRD-201300675
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: February 15, 2013

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §19.300(a)

Common Name	Botanical Name
Noxious plants	
alligatorweed	*Alternanthera philoxeroides*
balloonvine	*Cardiospermum halicacabum*
Brazilian peppertree	*Schinus terebinthifolius*
broomrape	*Orobanche ramosa*
camelthorn	*Alhagi camelorum*
Chinese tallow tree	*Triadica sebifera*
Eurasian watermilfoil	*Myriophyllum spicatum*
giant duckweed	*Spirodela oligorrhiza*
giant reed	*Arundo donax*
hedge bindweed	*Calystegia sepium*
hydrilla	*Hydrilla verticillata*
itchgrass	*Rottboellia cochinchinensis*
Japanese dodder	*Cuscuta japonica*
kudzu	*Pueraria montana* var. *lobata*
lagarosiphon	*Lagarosiphon major*
paperbark	*Melaleuca quinquenervia*
purple loosestrife	*Lythrum salicaria*
rooted waterhyacinth	*Eichhornia azurea*
saltcedar	*Tamarix* spp.
salvinia	*Salvinia* spp.
serrated tussock	*Nassella trichotoma*
torpedograss	*Panicum repens*
tropical soda apple	*Solanum viarum*
water spinach	*Ipomoea aquatica*
waterhyacinth	*Eichhornia crassipes*
waterlettuce	*Pistia stratiotes*

Invasive plants	
chinaberry	*Melia azedarach*
Chinese tallow tree	*Triadica sebifera*
Japanese climbing fern	*Lygodium japonicum*
kudzu	*Pueraria montana* var. *lobata*
saltcedar	*Tamarix* spp.
tropical soda apple	*Solanum viarum*

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 Department of Agriculture

Request for Applications: Specialty Crop Retail Promotion Reimbursement Grant

The Texas Department of Agriculture (TDA) announces the availability of funds from the United States Department of Agriculture (USDA) Specialty Crop Block Grant Program (SCBGP) to support a retailer produce promotion initiative. The SCBGP is authorized by the Food, Conservation, and Energy Act of 2008 (Farm Bill), which amended the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note) and authorized the USDA to provide grants to States for each of the fiscal years 2008 through 2012 to enhance the competitiveness of specialty crops.

Purpose. The Specialty Crop Retail Promotion Reimbursement Grant is designed to create a concentrated and coordinated effort of retailers across the state to promote Texas produce.

Eligibility. Texas retailers that purchase Texas grown produce or tree nuts and sell directly to consumers may apply for funds to enhance their promotional activities of these Texas specialty crops.

Retailers who are actively purchasing Texas grown produce and/or nuts and marketing directly to consumers may apply for funds to be used for one or more of the following activities:

(1) In-store Texas produce and/or nut demonstrations;

(2) Advertisements or store flyers highlighting Texas produce and/or nuts;

(3) Texas produce and/or nut coupons; and/or

(4) Online advertising of Texas produce and/or nuts.

Applicant agrees that any promotional materials that incorporate the GO TEXAN certification mark must be approved by TDA at least seven working days before release.

Program Requirements. Selected applicants are fully responsible for the administrative and financial control and management of the grant. Selected applicants will be required to submit pre- and post-activity sales volume and value information to TDA. The scope of the information and format of the report shall be prescribed by TDA. Selected applicants will be required to submit documentation of expenses related to the project before funds will be released.

Submitting an Application and Deadline. Application and guidance documents are available on TDA's website at www.TexasAgriculture.gov, or upon request from TDA. Please contact the Marketing and International Trade Division office at (512) 463-5045 with questions regarding this program.

Completed applications will be reviewed on a first-come, first-serve basis. Applications will be accepted by the Texas Department of Agriculture until the close of business (5:00 p.m. CST) on March 31, 2013, or until all funds are awarded.

Applications may be submitted to:

Physical Address: Marketing and International Trade Division, Trade and Business Development, Texas Department of Agriculture, 1700 North Congress Avenue, Austin, Texas 78701.

Mailing Address: Marketing and International Trade Division, Trade and Business Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

Fax: (888) 223-8638

Email: Grants@TexasAgriculture.gov

Assistance and Questions. For questions regarding submission of the proposal and TDA documentation requirements, please contact Marketing and International Trade Division office at (512) 463-5045 or by email at Grants@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-201300702
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: February 19, 2013

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Request for Proposals: Medicare Rural Hospital Flexibility Program Board of Trustee Continuing Education Reimbursement Grant

The Texas Department of Agriculture (TDA) is accepting proposals for the Board of Trustee Continuing Education Reimbursement Grant (Grant). The Grant is designed to support Critical Access Hospital (CAH) trustees in obtaining at least six (6) hours of continuing education (CE) each year. Proposals must be received by TDA by the close of business (5:00 p.m. CST) on Thursday, March 21, 2013.

Funding Parameters. Contingent upon available funds, each awarded CAH trustee may be eligible for reimbursement in an amount not to exceed $750 per person and $5,000 per CAH, per year for actual costs of receiving continuing board education. The State Office of Rural Health (SORH), an office within TDA, shall determine whether any costs submitted by a trustee are allowable for reimbursement. Contingent upon available funds, and in accordance with Texas Administrative Code Title 4, Part 1, Chapter 30, Subchapter B, §30.172, priorities for reimbursement are:

(1) Tuition and registration fees;

(2) Purchase of continuing education materials; and

(3) Other costs as approved by the SORH. (Such other costs may include travel expenses related to lodging and transportation, which may be reimbursed up to or at the approved state rates, according to the Texas state travel policies (https://fmx.cpa.state.tx.us/fm/travel/travelrates.php). All other travel expenses, including meals and other incidentals, will not be considered for reimbursement.)

Selected proposals will receive funding on a **cost-reimbursement** basis. Funds will not be advanced to grantees.

Eligibility. Texas CAHs may apply on behalf of trustees who are currently serving on their governing body responsible for the hospital's organization, management control and operation.

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 the 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 at the close of business **(5:00 p.m. CST) on Thursday, March 21, 2013.** *See 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.

Fax: (888) 216-9867

Email: Grants@TexasAgriculture.gov

Emailed applications must include a scanned Portable Document Format File (PDF) of the completed Form A: Application Page, including authorized signature.

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-201300703
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: February 19, 2013

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Office of the Attorney General

Notice of Proposed Settlement of an Enforcement Action under the Texas Health and Safety Code and Water Code

Notice is hereby given by the State of Texas of the following proposed settlement of an enforcement action under the Texas Health and Safety Code and Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed settlement if the comments disclose facts or considerations that indicate the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: County of Brazoria, Texas and the Texas Commission on Environmental Quality v. George Albert Adams III, et al., Cause No. 52130; in the 412th Judicial District Court, Brazoria County, Texas.

Proposed Settlement: The Final Judgment incorporates numerous agreed interlocutory judgments reached between the County and individual residents. The Final Judgment also embodies the verdict of the Court in the trial on the merits held on December 10, 2012. The Final Judgment permanently enjoins all Defendants to maintain their systems with temporary repairs approved by the Texas Commission on Environmental Quality, connect to a new wastewater treatment facility upon its completion, and destroy the old on-site sewage facilities.

For a complete description of the proposed settlement, the complete proposed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Mark A. Steinbach, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201300699
Katherine Cary
General Counsel
Office of the Attorney General
Filed: February 19, 2013

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - January 2013

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 January 2013, is $67.22 per barrel for the three-month period beginning on October 1, 2012, and ending December 31, 2012. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of January 2013, 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 January 2013, is $2.85 per mcf for the three-month period beginning on October 1, 2012, and ending December 31, 2012. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of January 2013, from a qualified Low-Producing Well, is eligible for 50% 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 January 2013, is $94.83 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 January 2013, 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 January 2013, is $3.35 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 January 2013, 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-201300707
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: February 20, 2013

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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 02/25/13 - 03/03/13 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 02/25/13 - 03/03/13 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/13 - 03/31/13 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/13 - 03/31/13 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-201300698
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 19, 2013

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Texas Education Agency

Public Notice Announcing the Availability of the Proposed Texas Individuals with Disabilities Education Improvement Act of 2004 (IDEA) Eligibility Document: State Policies and Procedures

Purpose and Scope of the Part B Federal Fiscal Year (FFY) 2013 State Application and its Relation to Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). As a result of the 2004 amendments to the IDEA, all states must ensure that the state has on file with the Secretary of the U.S. Department of Education assurances that the state meets or will meet all of the eligibility requirements of Part B of the IDEA as amended in 2004 by Public Law 108-446. A state may do this by one of the following methods: (1) providing assurances in the Part B FFY 2013 State Application that it has in effect policies and procedures to meet the requirements of Part B of the IDEA as amended in 2004 by Public Law 108-446; (2) providing assurances in the State Application that the state will operate consistent with all the requirements of Public Law 108-446 and applicable regulations and make such changes to existing policies and procedures as necessary to bring those policies and procedures into compliance with the requirements of IDEA, as amended, as soon as possible and not later than June 30, 2014; or (3) submitting modifications to state policies and procedures previously submitted to the U.S. Department of Education.

The State of Texas (Texas Education Agency) has chosen to submit a 2013 State Application providing assurances the state will operate consistent with all the requirements of Public Law 108-446 and applicable regulations.

Availability of the State Application. The Proposed State Application is available on the Texas Education Agency (TEA) Special Education web page at http://www.tea.state.tx.us/index2.aspx?id=2147493812. The Proposed State Application document may be reviewed and/or downloaded from this web page address. In addition, instructions for submitting public comments are also available from the same site. The Proposed State Application document will also be available at the 20 regional education service centers and at the TEA Library (Ground Floor, Room G-102), William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Parties interested in reviewing the Proposed State Application should contact the TEA Division of Federal and State Education Policy at (512) 463-9414.

Procedures for Submitting Written Comments About the Proposed State Application. The TEA will accept written comments pertaining to the Proposed State Application by mail to the Texas Education Agency, Division of Federal and State Education Policy, 1701 North Congress Avenue, Austin, Texas 78701-1494 or by email to sped@tea.state.tx.us.

Timetable for Submitting the Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004 for FFY 2013 to the Secretary of Education for Approval. After review and consideration of all public comments, the TEA will make necessary/appropriate modifications and will submit the State Application on or before May 10, 2013.

For more information, contact the TEA Division of Federal and State Education Policy by mail at 1701 North Congress Avenue, Austin, Texas 78701; by telephone at (512) 463-9414; by fax at (512) 463-9560; or by email at sped@tea.state.tx.us.

TRD-201300713
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 20, 2013

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Public Notice Announcing the Texas Education Agency's Intent to Delay Distribution of the Federal Fiscal Year 2013 Adult Education and Family Literacy Act and English Language Civics Funds

Purpose and Scope of the Notice. The Texas Education Agency (TEA) intends to postpone any action related to distribution of Federal Fiscal Year (FFY) 2013 Adult Education and Family Literacy Act (AEFLA) and English Language Civics (EL Civics) funds awarded to the state of Texas under Public Law (P.L.) 105-220, the federal Workforce Investment Act, Title II, Subtitle A, §1000(A)(4); and P.L. 106-113, Consolidated Appropriations, Subchapter H, §29.252, until such time as the 83rd Texas Legislature, 2013, takes final action on legislative proposals

to transfer responsibility for AEFLA and EL Civics funds from TEA to another eligible entity.

Should the 83rd Texas Legislature choose to leave responsibility for AEFLA and EL Civics funds with TEA, it is TEA's intent to use a competitive process with the FFY 2013 funds to select a technical assistance provider.

Should the 83rd Texas Legislature pass legislation to transfer responsibility for AEFLA and EL Civics funds to an entity other than TEA, then TEA will proceed immediately to develop a transition plan in collaboration with the entity designated as the recipient of the transfer of responsibility. The transition plan will comply with all provisions of the legislation.

Additionally, should the 83rd Texas Legislature pass such legislation, TEA intends, if permitted by such legislation, to prevent interruption of adult basic education services currently provided with AEFLA and EL Civics funds by using unexpended FFY 2012 and soon-to-be awarded FFY 2013 AEFLA and EL Civics funds to extend existing adult basic education grants and contracts until the date of the transfer as specified in legislation.

The provisions of this notice also apply to any federal and state adult education funds designated for Temporary Assistance to Needy Families (TANF) and any state general revenue funds appropriated for adult basic education.

Further Information. For more information, contact Jan Lindsey, Federal and State Education Policy, by email at jan.lindsey@tea.state.tx.us or by telephone at (512) 936-6060.

TRD-201300714
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 20, 2013

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Employees Retirement System of Texas

Request for Proposal to Conduct a Compliance Review of the Third-Party Administrator of the Texa$aver Deferred Compensation Program

In accordance with Texas Government Code, §609.509, the Board of Trustees of the Employees Retirement System of Texas ("ERS") is authorized to contract for the necessary goods and consolidated billing, accounting, and other services provided with a deferred compensation plan and to periodically conduct a compliance review of the third-party administrator ("TPA"). ERS is issuing a Request for Proposal ("RFP") for qualified auditing firms (each, an "Auditor") to Conduct a Compliance Review of the TPA of the Texa$aver Deferred Compensation Program ("Program") for an initial term beginning September 1, 2013 through December 31, 2016. The selected Auditor shall provide the level of benefits required in the RFP and meet other requirements that are in the best interest of ERS, the Group Benefits Program (the "GBP"), its Participants (as defined in the GBP) and the state of Texas, and shall be required to execute a Contractual Agreement ("Contract") provided by, and satisfactory to, ERS.

An Auditor wishing to respond to this Request shall: 1) Maintain its principal place of business and provide all services within the United States of America, and shall have a current, valid Certificate of Authority and/or current license to do business as an auditor from the Secretary of State of the state of Texas; 2) Have documented experience providing compliance review services with deferred compensation plans, one of which will have an enrollment of 25,000 participants working in multiple locations for a minimum of three (3) years; 3) Have a current net worth of $500,000 as demonstrated by audited financial statements as of the close of the Auditor's most recent fiscal year; and 4) Have extensive knowledge of the applicable Internal Revenue Code regulations, including 401(a), 401(k) and 457.

The RFP will be available on or after March 7, 2013 from ERS' website and will include documents for Auditor's review and response. To access the secured RFP, an interested Auditor shall email its request to the attention of iVendor Mailbox at: **ivendorquestions@ers.state.tx.us.** The email request shall reflect: 1) Auditor's legal name, and 2) Point of contact's full name, physical address, phone and fax numbers, and email address. Upon receipt of this information, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP.

General questions concerning the RFP and/or ancillary bid materials should be sent to the iVendor Mailbox where the responses, if applicable, are updated frequently. Submission deadline for all RFP questions submitted to the iVendor Mailbox will be due on March 22, 2013 at 4:00 p.m. CT.

To be eligible for consideration, the Auditor is required to submit a total of six (6) sets of the Proposal in a sealed container in accordance with the instructions set forth in the RFP. All materials shall be received by ERS no later than 12:00 Noon (CT) on April 18, 2013.

ERS will base its evaluation and selection of an Auditor on factors including, but not limited to, the following, which are not necessarily listed in order of priority: compliance with and adherence to the RFP, minimum and preferred requirements as specified, fee proposal and other relevant criteria. Each Proposal will be evaluated both individually and relative to the Proposals of other qualified Auditors. Complete specifications will be included with the RFP.

ERS reserves the right to reject any and/or all Proposals and/or call for new Proposals if deemed by ERS to be in the best interests of ERS, the Program, its Participants and the state of Texas. ERS also reserves the right to reject any Proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or in connection with the preparation of the RFP. ERS reserves the right to vary all provisions set forth at any time prior to execution of a Contract where ERS deems it to be in the best interest of ERS, the Program, its Participants and the state of Texas.

TRD-201300677
Tim N. Sims
Acting General Counsel
Employees Retirement System of Texas
Filed: February 19, 2013

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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 April 1, 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 April 1, 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: 21 & 130, INCORPORATED dba Mustang Travel Center; DOCKET NUMBER: 2012-2158-PST-E; IDENTIFIER: RN103952347; LOCATION: Buda, Caldwell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and also by failing to provide release detection for the piping associated with the USTs; PENALTY: $7,635; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

(2) COMPANY: AR-RAZZAQ INVESTMENTS, INCORPORATED dba Discount Mart 4; DOCKET NUMBER: 2012-2257-PST-E; IDENTIFIER: RN102352192; LOCATION: Mount Pleasant, Titus County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and also by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,877; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Atkinson Candy Company; DOCKET NUMBER: 2013-0177-WQ-E; IDENTIFIER: RN100598929; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: retail sales; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Bell, Sammie L.; DOCKET NUMBER: 2013-0180-WOC-E; IDENTIFIER: RN103240081; LOCATION: Skellytown, Carson County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: BlueLinx Corporation; DOCKET NUMBER: 2012-2219-PST-E; IDENTIFIER: RN102829124; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and also by failing to provide release detection for the suction piping associated with the UST; PENALTY: $3,516; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(6) COMPANY: Buc-ee's, Ltd.; DOCKET NUMBER: 2012-2723-PST-E; IDENTIFIER: RN102044187; LOCATION: Lake Jackson, Brazoria 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: $5,625; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Calhoun's Country Store, Incorporated; DOCKET NUMBER: 2012-2284-PST-E; IDENTIFIER: RN104778535; LOCATION: Dayton, Liberty County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and also by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $2,567; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Cameron Independent School District; DOCKET NUMBER: 2012-2232-PST-E; IDENTIFIER: RN101666162; LOCATION: Cameron, Milam County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: City of Amherst; DOCKET NUMBER: 2012-2134-MWD-E; IDENTIFIER: RN101607687; LOCATION: Amherst, Lamb County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5) and TCEQ Permit Number WQ0010118001, Operational Requirements Number 1 and Special Provisions Number 3, by failing to properly operate and maintain all facilities and systems of treatment and control; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and TCEQ Permit Number WQ0010118001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater or any other waste; PENALTY: $1,876; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 259-2587; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(10) COMPANY: City of La Ward; DOCKET NUMBER: 2012-2318-PWS-E; IDENTIFIER: RN101388825; LOCATION: La Ward, Jackson County; TYPE OF FACILITY: municipal water system; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification to customers of the facility within 24 hours of a low pressure occurrence using the prescribed notification format as specified in 30 TAC §290.47(e); PENALTY: $168; ENFORCEMENT COORDI-

NATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: City of Plainview; DOCKET NUMBER: 2012-1700-PWS-E; IDENTIFIER: RN101228997; LOCATION: Plainview, Hale County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.44(h)(1)(A), by failing to install the appropriate backflow prevention assemblies or an air gap at all residences or establishments where an actual or potential contamination hazard exists, as identified in 30 TAC §290.47(i); 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe that cross connections or other potential contamination hazards exists; 30 TAC §290.46(s)(2)(B)(i), (ii), and (iv), by failing to calibrate the combined filter effluent (CFE) turbidimeter and by failing to verify the accuracy of the CFE and individual filter effluent turbidimeters; and 30 TAC §290.46(s)(2)(C), by failing to calibrate the benchtop chlorine analyzer with a primary standard at least once every 90 days and verify the accuracy of on-line disinfectant residual analyzers at least once every 30 days using chlorine solutions of known concentrations; PENALTY: $15,822; Supplemental Environmental Project offset amount of $12,658 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Household Hazardous Waste Clean-up; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(12) COMPANY: City of Sabinal; DOCKET NUMBER: 2012-1891-MWD-E; IDENTIFIER: RN104859384; LOCATION: Sabinal, Uvalde County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System Permit Number WQ0014689001, Effluent Limitations and Monitoring Requirements Number 1 and Monitoring and Reporting Requirements Number 1, by failing to comply with permitted effluent limits and also by failing to timely submit complete monitoring results at the intervals specified in the permit; PENALTY: $9,451; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: City of Stockdale; DOCKET NUMBER: 2012-1357-MWD-E; IDENTIFIER: RN102916194; LOCATION: Stockdale, Wilson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010292001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010292001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2011, by September 1, 2011; PENALTY: $7,012; Supplemental Environmental Project offset amount of $5,610 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: CLEAN EARTH SOLUTIONS, INCORPORATED; DOCKET NUMBER: 2012-2162-MSW-E; IDENTIFIER: RN106380959; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) storage and processing; RULE VIOLATED: 30 TAC §330.7(a), by failing to obtain a permit or other authorization prior to conducting storage, processing, or disposal of MSW; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: COLLINS WISE OIL COMPANY, L.L.C.; DOCKET NUMBER: 2013-0237-PST-E; IDENTIFIER: RN101672376; LOCATION: Hillsboro, Hill County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: DAFFODIL FOOD, INCORPORATED dba The Right Choice; DOCKET NUMBER: 2012-2002-PST-E; IDENTIFIER: RN102374980; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and also by failing to provide release detection for the piping associated with the UST; PENALTY: $2,383; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: Darrell Earnest and Pat Earnest dba Hiway Grocery; DOCKET NUMBER: 2012-2250-PST-E; IDENTIFIER: RN102833472; LOCATION: Lawn, Taylor 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 corrosion protection for the underground storage tank system; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(18) COMPANY: Diocese of Victoria dba St. Mary's Catholic Church; DOCKET NUMBER: 2012-2304-PWS-E; IDENTIFIER: RN106213291; LOCATION: Hallettsville, Lavaca County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notice of the failure to sample; and 30 TAC §290.109(c)(3)(A)(i), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample; PENALTY: $2,310; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(19) COMPANY: Eric Pipher; DOCKET NUMBER: 2012-1451-EAQ-E; IDENTIFIER: RN106386808; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: restaurant/bar; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain authorization prior to beginning a regulated activity over the Edwards Aquifer; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Heather

Brister, (254) 761-3034; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

(20) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2012-2355-AIR-E; IDENTIFIER: RN100211077; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: oil and gas treating station; RULE VIOLATED: Federal Operating Permit Number O390/General Operating Permit Number 514, Site Wide Requirements (b)(8)(E)(ii), Standard Permit Registration Number 32928, 30 TAC §122.143(4) and §116.615(2), and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions. Since the emissions event could have been avoided through better operational practices, the respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; PENALTY: $12,525; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: Glenn Thurman, Incorporated; DOCKET NUMBER: 2012-2127-WQ-E; IDENTIFIER: RN106035389; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: construction site; RULE VIOLATED: Texas Pollutant Discharge Elimination System General Permit Number TXR15QX66, Part III, Section F.7.(a), Inspections of Controls, 30 TAC §281.25(a)(4), by failing to conduct site inspections of control measures at least once every seven calendar days as specified in the site's Storm Water Pollution Prevention Plan; PENALTY: $8,017; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: GRANDE-WEST END, LLC; DOCKET NUMBER: 2012-1578-PST-E; IDENTIFIER: RN102488962; LOCATION: Tyler, Smith County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $8,438; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(23) COMPANY: Hatem Alramahi dba Eagle Stop Convenience Store; DOCKET NUMBER: 2012-2433-PST-E; IDENTIFIER: RN102396686; LOCATION: Denton, Denton 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 corrosion protection for the underground storage tank system; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Heritage Food Store Corporation; DOCKET NUMBER: 2012-2569-PST-E; IDENTIFIER: RN102440419; LOCATION: Friendswood, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: HOODBRO ENTERPRISES, INCORPORATED dba Marsh Lane Texaco; DOCKET NUMBER: 2013-0239-PST-E; IDENTIFIER: RN100657022; LOCATION: Carrollton, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: J & J MANAGEMENT, INCORPORATED dba Town Market 1; DOCKET NUMBER: 2012-2397-PST-E; IDENTIFIER: RN101870681; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,568; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(27) COMPANY: JML Enterprises, Incorporated dba Pic-N-Pay Grocery; DOCKET NUMBER: 2012-2299-PST-E; IDENTIFIER: RN102783669; LOCATION: Mount Pleasant, Titus 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: $1,875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(28) COMPANY: Jon Schultz dba Schultz's Kountry Korner; DOCKET NUMBER: 2012-2582-PST-E; IDENTIFIER: RN102246543; LOCATION: Mount Pleasant, Titus County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and also by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $2,942; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(29) COMPANY: Julie Hodgson dba Wildcard Services; DOCKET NUMBER: 2012-2077-MSW-E; IDENTIFIER: RN105837702; LOCATION: Onalaska, Polk County; TYPE OF FACILITY: tire transport company that disposed of tires at an unauthorized facility located at 2433 Farm-to-Market Road 3126, Livingston, Texas; RULE VIOLATED; 30 TAC §328.57(c)(3) and §330.15(a)(2), by failing to ensure that scrap tires or scrap tire pieces are transported to an authorized facility; and 30 TAC §328.58(b), by failing to record all required information on the manifest; PENALTY: $11,250; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(30) COMPANY: Kutob LLC dba Pine Tree Food Mart; DOCKET NUMBER: 2012-1940-PST-E; IDENTIFIER: RN103140760; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current UST delivery certificate before accepting delivery of a regulated substance into the UST system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor

the UST for releases at a frequency of a least once every month (not to exceed 35 days between each monitoring); PENALTY: $6,610; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(31) COMPANY: Laddie Machacek dba Bill Holley Centre; DOCKET NUMBER: 2011-1195-PWS-E; IDENTIFIER: RN101202943; LOCATION: Pearland, Brazoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account Number 90200496 for Fiscal Years 2010 and 2011; PENALTY: $3,893; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(32) COMPANY: Lubbock Reese Redevelopment Authority Corporation; DOCKET NUMBER: 2012-2369-PWS-E; IDENTIFIER: RN102595774; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: multi-use research and development park with a public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual concentration of at least 0.5 milligrams per liter total chlorine in the water within the distribution system at all times; PENALTY: $100; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(33) COMPANY: MACIVE LLC dba Winfield Travel Center; DOCKET NUMBER: 2012-1895-PST-E; IDENTIFIER: RN105139638; LOCATION: Winfield, Titus County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and also by failing to provide release detection for the piping associated with the UST; PENALTY: $2,568; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(34) COMPANY: McWane, Incorporated dba Tyler Pipe Company; DOCKET NUMBER: 2012-2063-IWD-E; IDENTIFIER: RN102679867; LOCATION: Swan, Smith County; TYPE OF FACILITY: grey and ductile iron foundry; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and §319.4, and Texas Pollutant Discharge Elimination System Permit Number WQ0001793000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Numbers 001 and 004, by failing to comply with permitted effluent limits and also by failing to collect and analyze samples for total cyanide, total sulfate, total cadmium, and total dissolved solids for the annual monitoring period ending August 31, 2011; PENALTY: $21,075; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(35) COMPANY: MKSN INVESTMENTS, LLC dba New Happy Food Mart; DOCKET NUMBER: 2012-1744-PST-E; IDENTIFIER: RN101867547; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,125; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(36) COMPANY: Parkway Municipal Utility District; DOCKET NUMBER: 2012-2333-WQ-E; IDENTIFIER: RN102675147; LOCATION: Harris County; TYPE OF FACILITY: wastewater collection system; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: $3,250; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(37) COMPANY: PERCY PIERCE TRADING CORPORATION dba Percy's Food Mart; DOCKET NUMBER: 2012-2032-PST-E; IDENTIFIER: RN102238318; LOCATION: Gilmer, Upshur County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 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; PENALTY: $5,750; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(38) COMPANY: Phillips 66 Company; DOCKET NUMBER: 2012-2231-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), TCEQ Air Permit Numbers 49140 and 5920A, and PSDTX103M4, Special Conditions Number 1 and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions. Since the emissions event was avoidable by better operational practices, the respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; PENALTY: $13,125; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(39) COMPANY: Plano Independent School District; DOCKET NUMBER: 2012-2226-PST-E; IDENTIFIER: RN101550663; LOCATION: Plano, Collin County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,000; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(40) COMPANY: Polk Oil Company, Incorporated dba Polk Pick It Up 6, Docs Country Store 2, and Northridge Quick Stop; DOCKET NUMBER: 2012-2233-PST-E; IDENTIFIER: RN101750701 (Facility Number 1), RN105019574 (Facility Number 2), and RN102049145 (Facility Number 3); LOCATION: Lufkin, Angelina County and Crockett, Houston County; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d) by failing to provide corrosion protection for the underground storage tank (UST) system at Facility Number 1; and 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 systems at Facility Numbers 2 and 3; PENALTY:

$19,782; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(41) COMPANY: Poppy's Country Market, LLC; DOCKET NUMBER: 2012-2186-PST-E; IDENTIFIER: RN102424272; LOCATION: Conroe, Montgomery 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: $3,375; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(42) COMPANY: Quadratulla Habibulla dba Chevron Food Mart; DOCKET NUMBER: 2012-2300-PST-E; IDENTIFIER: RN102241882; LOCATION: Lytle, Atascosa County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,943; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(43) COMPANY: Rafiq Ebrahim dba One Stop Grocery; DOCKET NUMBER: 2012-2229-PST-E; IDENTIFIER: RN102030855; LOCATION: Thorndale, Milam 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: $2,813; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(44) COMPANY: Ringo Drilling I, LP; DOCKET NUMBER: 2013-0176-WR-E; IDENTIFIER: RN106552862; LOCATION: Tye, Taylor County; TYPE OF FACILITY: individual; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to notify the executive director before impounding, diverting, or using state water without a required permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(45) COMPANY: Rocky Luetge dba P & M Quick Stop; DOCKET NUMBER: 2012-2534-PST-E; IDENTIFIER: RN101731727; LOCATION: Industry, Austin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,942; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(46) COMPANY: Sammy J. Young and Michael C. Young dba Chevron Food Mart 2; DOCKET NUMBER: 2012-2442-PST-E; IDENTIFIER: RN103059846; LOCATION: Mineola, Wood 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: $6,750; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(47) COMPANY: Shuaib Ullah dba 1st Stop; DOCKET NUMBER: 2012-2326-PST-E; IDENTIFIER: RN101804441; LOCATION: Kingwood, Montgomery 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: $4,125; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(48) COMPANY: SIRPUNCH, INCORPORATED dba Quick Corner Store; DOCKET NUMBER: 2013-0238-PST-E; IDENTIFIER: RN101770204; LOCATION: Tomball, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(49) COMPANY: TEMPLE GROCERY, INCORPORATED; DOCKET NUMBER: 2012-2056-PST-E; IDENTIFIER: RN102368503; LOCATION: Temple, Bell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); and also by failing to provide proper release detection for the pressurized piping associated with the UST system; PENALTY: $3,879; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(50) COMPANY: Texas Department of Criminal Justice; DOCKET NUMBER: 2012-1955-MWD-E; IDENTIFIER: RN102314069; LOCATION: Angleton, Brazoria County; TYPE OF FACILITY: correctional institution; RULE VIOLATED: Texas Pollutant Discharge Elimination System Permit Number WQ0010829001, Effluent Limitations and Monitoring Requirements Numbers 1, 2 and 6, 30 TAC §305.125(1) and TWC, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: $11,550; Supplemental Environmental Project offset amount of $11,550 applied to Wastewater Treatment Assistance for Low-Income Homeowners; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(51) COMPANY: TEXAS PLEASANT VALLEY ENTERPRISES, INCORPORATED dba C-Mart Food Store 7; DOCKET NUMBER: 2010-1722-PST-E; IDENTIFIER: RN101492536; LOCATION: Austin, Travis 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; and 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide corrosion protection for all underground components of a UST system which was designed or used to convey, contain, or store regulated substances; PENALTY: $3,675; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

(52) COMPANY: The Tex-Mex Rodriguez LLC dba Happy Corner; DOCKET NUMBER: 2012-2468-PST-E; IDENTIFIER: RN102026499; LOCATION: Cypress, Harris County; TYPE OF

FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $5,200; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(53) COMPANY: Valley Boring Service LLC; DOCKET NUMBER: 2013-0227-WR-E; IDENTIFIER: RN106573223; LOCATION: Edinburg, Zapata County; TYPE OF FACILITY: individual; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to notify the executive director before impounding, diverting, or using state water without a required permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(54) COMPANY: VRST Corporation dba Lucky Mart 2; DOCKET NUMBER: 2012-2330-PST-E; IDENTIFIER: RN102007671; LOCATION: Lubbock, 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 every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(55) COMPANY: Wes Moses dba Texan Portable Toilets; DOCKET NUMBER: 2012-1409-SLG-E; IDENTIFIER: RN105982037; LOCATION: Pearland, Harris County; TYPE OF FACILITY: chemical toilet rental and sludge transporter; RULE VIOLATED: 30 TAC §312.145(b)(4), by failing to submit an Annual Summary Report for Transporters of Municipal Sludges and Similar Wastes by July 1, 2011, for the reporting period June 1, 2010 - May 31, 2011; TWC, §26.121(a)(2) and 30 TAC §312.143, by failing to deposit wastes at a facility that has written authorization by permit or registration issued by the executive director to receive wastes; and 30 TAC §312.142(a), by failing to maintain a record of each individual collection and deposit in the form of a trip ticket, PENALTY: $6,375; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(56) COMPANY: Williamson County; DOCKET NUMBER: 2012-1045-EAQ-E; IDENTIFIER: RN106064751; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: road construction site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan Exception Request prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $938; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

(57) COMPANY: Wimberley Independent School District; DOCKET NUMBER: 2012-1794-EAQ-E; IDENTIFIER: RN105590780; LOCATION: Wimberley, Hays County; TYPE OF FACILITY: elementary school; RULE VIOLATED: 30 TAC §213.23(i) and Edwards Aquifer Contributing Zone Plan (CZP) Number 11-08071801, Standard Condition (SC) Number 3, by failing to obtain approval of a modification to an approved Edwards Aquifer CZP prior to constructing the modification; 30 TAC §213.5(f)(1) and Edwards Aquifer CZP Number 11-08071801, SC Number 4, by failing to provide written notification of intent to commence construction to the Regional Office no later than 48 hours prior to commencing construction; and 30 TAC §213.5(b)(4)(D)(ii)(II) and §213.24(6)(C) and Edwards Aquifer CZP Number 11-08071801, SC Number 10, by failing to submit certification by a Texas Licensed Professional Engineer that the design and function of the best management practices and measures were constructed as designed within 30 days of site completion; PENALTY: $7,500; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808 (512) 339-2929.

(58) COMPANY: WORTHAM OAKS HOMEOWNERS ASSOCIATION, INCORPORATED; DOCKET NUMBER: 2011-1824-MLM-E; IDENTIFIER: RN104151444; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: residential subdivision; RULE VIOLATED: 30 TAC §§213.4(k), 213.5(b)(5)(A), and 330.15(c) and Water Pollution Abatement Plan Number 13-04012802, Special Conditions Number VII, by failing to maintain best management practices and measures to prevent pollutants from entering sensitive features located within the Edwards Aquifer Recharge Zone; PENALTY: $2,750; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201300678
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 19, 2013

♦ ♦ ♦

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

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 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 **April 1, 2013.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 1, 2013.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: ALMEDA PLAZA, INC. d/b/a Sunny's Food Store; DOCKET NUMBER: 2012-0944-PST-E; TCEQ ID NUMBER: RN102376563; LOCATION: 12170 Almeda Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,600; STAFF ATTORNEY: Cullen McMorrow, Litigation Division, MC 175, (512) 239-0607; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Alice Michelle Chapa d/b/a Mikes Market; DOCKET NUMBER: 2012-0536-PST-E; TCEQ ID NUMBER: RN101860500; LOCATION: 922 Farm-to-Market Road 3024, Mathis, Live Oak County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration of the delivery certificate; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting a delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; and TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: $23,651; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100

(3) COMPANY: Beverly Minaldi d/b/a Timberlane Water System; DOCKET NUMBER: 2011-1089-MLM-E; TCEQ ID NUMBER: RN101182624; LOCATION: the end of Farm-to-Market Road 2928, Hemphill, Sabine County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §288.20(a) and §288.30(5), by failing to develop, adopt, and submit a drought contingency plan that includes all elements for municipal use by a retail public water system; 30 TAC §290.46(v), by failing to ensure that all electrical wiring at the facility is securely installed in compliance with a local or national electrical code; 30 TAC §290.121(a) and (b), by failing to provide an accurate, up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; Texas Health and Safety Code (THSC), §341.0351 and 30 TAC §290.39(j)(1)(A), by failing to notify the executive director prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure capacity; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; THSC, §341.033(a) and 30 TAC §290.46(c)(4)(A), by failing to operate the facility under the direct supervision of a water works operator with a minimum of a Class D or higher operator license; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meters once every three years; 30 TAC §290.41(c)(1)(F), by failing to provide sanitary control easements that cover the land within 150 feet of each well; 30 TAC §290.42(l), by failing to compile and maintain a thorough plant operation manual for operator review and reference; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(f)(3)(A)(i)(III) and (ii)(III) and (iv), by failing to provide facility records to TCEQ personnel at the time of the investigation; 30 TAC §290.46(j), by failing to complete customer service inspection certificates prior to providing continuous water service to new construction, and on any existing service when the water purveyor has reason to believe that either cross-connections or other potential contaminant hazards exist; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's ground storage tank; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's two pressure tanks; 30 TAC §290.190(c)(1)(A) and (B), by failing to collect routine distribution coliform samples at active service connections which are representative of water quality throughout the distribution system and at locations specified in the system's monitoring plan; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends at least three feet from the well casing in all directions; 30 TAC §290.43(d)(2), by failing to provide the facility's two pressure tanks with a pressure release device; and 30 TAC §290.46(m)(4), by failing to maintain all treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in watertight condition; PENALTY: $5,269; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Bob King's Truck Beds, LLC d/b/a King's Truck Beds; DOCKET NUMBER: 2011-2252-AIR-E; TCEQ ID NUMBER: RN104311055; LOCATION: 1667 East Highway 114, Boyd, Wise County; TYPE OF FACILITY: fabricated metals products plant; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), 30 TAC §116.110(a), and AO Docket Number 2009-0562-AIR-E Ordering Provision Numbers 2.a., 2.b., and 2.c., by failing to obtain a permit or satisfy the conditions for a permit by rule before conducting surface coating operations at the plant; and THSC, §382.0518(a) and §382.085(b), 30 TAC §116.110(a), and AO Docket Number 2009-0562-AIR-E Ordering Provision Numbers 2.a., 2.b. and 2.c., by failing to obtain a permit or satisfy the conditions for a permit by rule before conducting dry abrasive cleaning operations; PENALTY: $30,420; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: CALIFORNIA WAREHOUSE, INC. d/b/a Kingsland Food Mart; DOCKET NUMBER: 2012-2042-PST-E; TCEQ ID NUMBER: RN105252845; LOCATION: 21206 Kingsland Boulevard, Katy, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(a), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $7,650; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Calvin Court; DOCKET NUMBER: 2011-0364-IHW-E; TCEQ ID NUMBER: 100608538; LOCATION: 3000 Court Street, Texarkana, Bowie County; TYPE OF FACILITY: former laminate manufacturing facility; RULES VIOLATED: 30 TAC §334.4(3), by failing to prevent the unauthorized discharge and improper disposal of industrial solid waste; 30 TAC §§335.62, 335.503(a) and 335.504, and 40 Code of Federal Regulations §262.11, by failing to perform hazardous waste determinations and classification on all waste-stored

on site; and 30 TAC §335.2, by failing to obtain a permit for the storage of industrial hazardous and solid waste; PENALTY: $13,000; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (403) 403-4023; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: C.O. Jones Enterprises L.L.C. dba Triangle Market; DOCKET NUMBER: 2012-0909-PST-E; TCEQ ID NUMBER: RN101655587; LOCATION: 1500 West Highway 90, Alpine, Brewster County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.50(b)(1)(A), (2)(A)(i)(III) and (ii)(I), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), by failing to test the line leak detectors at least once per year for performance and operational reliability, and by failing to provide release detection for the pressurized piping associated with the USTs; PENALTY: $6,166; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(8) COMPANY: David M Chandler, Inc.; DOCKET NUMBER: 2012-1976-PWS-E; TCEQ ID NUMBER: RN101439875; LOCATION: intersection of State Highway 31 and Shell Camp Road, Gregg County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.190(c)(4)(B), by failing to collect at least one raw groundwater source *Escherichia coli* sample from both the facility's wells within 24 hours of notification of a distribution total coliform-positive sample during the month of November 2011; Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.113(f)(5), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for total haloacetic acids, based on a running annual average; and THSC, §341.0315(c) and 30 TAC §290.113(f)(4), by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes, based on the running annual average; PENALTY: $565; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Eshaan Retail Group Inc d/b/a Texans Texaco; DOCKET NUMBER: 2012-1376-PST-E; TCEQ ID NUMBER: RN101673218; LOCATION: 919 North General Bruce Drive, Temple, Bell County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the piping associated with the UST system and by failing to conduct the annual piping tightness test; PENALTY: $3,763; STAFF ATTORNEY: David Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: FAMIS Corporation d/b/a Famis Food Mart; DOCKET NUMBER: 2012-0763-PST-E; TCEQ ID NUMBER: RN102266244; LOCATION: 1205 North Dickinson Drive, Rusk, Cherokee County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the pressurized piping associated with the UST system; PENALTY: $2,633; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Happyle Corporation d/b/a Melbos Food Store; DOCKET NUMBER: 2012-1466-PST-E; TCEQ ID NUMBER: RN102719606; LOCATION: 212 East Church Street, Livingston, Polk County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; and TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each failed monitoring), and by failing to provide release detection for the piping associated with the UST system; PENALTY: $7,632; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838

(12) COMPANY: Inderjeet Dhillon d/b/a Kwik Pick; DOCKET NUMBER: 2011-2095-PST-E; TCEQ ID NUMBER: RN102348828; LOCATION: 1101 4th Street, Graham, Young County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii), (4)(C) 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 within 30 days of the ownership change; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain the UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $12,708; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(13) COMPANY: Lamberti USA, Incorporated; DOCKET NUMBER: 2011-1264-IWD-E; TCEQ ID NUMBER: RN101206803; LOCATION: approximately 2,400 feet southwest of the San Bernard River/United States Highway 59 bridge and approximately 3.5 miles northeast of the town of Hungerford, Wharton County; TYPE OF FACILITY: chemical manufacturing complex with an associated wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0002469000, Efflu-

ent Limitations and Monitoring Requirements Number 1, by failing to comply with its permitted effluent limits in May, July, August, and December, 2010, and January 2011; TWC, §26.121(a)(1) and 30 TAC §305.125(1) and TPDES Permit Number WQ0002469000, Effluent Limitations and Monitoring Requirement Number 1, by failing to comply with its permitted effluent limits in April, September, October, and November, 2010, and February and March, 2011; and 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0002469000, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in its permit; PENALTY: $64,129; Supplemental Environmental Project offset amount of $32,064 applied to Friends of the River San Bernard Natural Area Acquisition and Conservation Program; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: ZAKI & SON INC; DOCKET NUMBER: 2012-0510-PST-E; TCEQ ID NUMBER: RN105571947; LOCATION: 502 Rusk Avenue, Wells, Cherokee County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 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 system within 30 days of the occurrence of the change or addition, and by failing to obtain a delivery certificate; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST; and TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the UST system 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 pressurized piping associated with the UST system by failing to conduct the annual piping tightness and line leak detector tests; PENALTY: $14,439; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201300687
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 19, 2013

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 1, 2013.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 1, 2013.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: JBTB Investments I, Ltd.; DOCKET NUMBER: 2012-2136-EAQ-E; TCEQ ID NUMBER: RN102840485; LOCATION: east of Southwestern Boulevard, approximately 0.5 miles south of State Highway 29, Georgetown, Williamson County; TYPE OF FACILITY: commercial land development and residential site; RULES VIOLATED: 30 TAC §213.5(b)(5)(A) and Water Pollution Abatement Plan Number 11-02061103, Standard Condition Number 15, by failing to maintain permanent Best Management Practice after construction; PENALTY: $7,875; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Austin Regional Office, Post Office Box 13087, MC R-11, Austin, Texas 78711, (512) 339-2929.

(2) COMPANY: Jeff A. Arbogust; DOCKET NUMBER: 2012-1513-LII-E; TCEQ ID NUMBER: RN106399892; LOCATION: 10211 Farm-to-Market Road 969, Austin, Travis County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: TWC, §37.003, Texas Occupational Code, §1903.251, and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system; 30 TAC §344.34(a), by failing to refrain from using or attempting to use the license, including the license number, of an irrigator, installer, irrigation technician, or irrigation inspector to whom a license is issued; and 30 TAC §344.71(b), by failing to include in all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system the irrigator's name and license number and the required TCEQ statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC 178, P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's Web site is: www.tceq.texas.gov"; PENALTY: $1,393; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Austin Regional Office, Post Office Box 13087, MC R-11, Austin, Texas 78711, (512) 339-2929.

(3) COMPANY: Los Ebanos Land & Cattle Company, LLC.; DOCKET NUMBER: 2011-2190-MSW-E; TCEQ ID NUMBER: RN106233695; LOCATION: 500 Cenizo Street, Sullivan City, Hidalgo County; TYPE OF FACILITY: unauthorized waste disposal site behind the Sullivan City fire department and city hall; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unau-

thorized disposal of municipal solid waste; PENALTY: $15,000; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0568; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: Ramon C. Gonzales, Jr. d/b/a South Midland County Water Systems; DOCKET NUMBER: 2012-1973-PWS-E; TCEQ ID NUMBER: RN101398014; LOCATION: County Road 1192 South and County Road 117 West, west of State Highway 349, Midland, Midland County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(e), by failing to provide the results of quarterly nitrate/nitrite sampling to the executive director for the second quarter of 2011; 30 TAC §290.107(e) and §290.108(e), by failing to provide the results of triennial volatile organic chemical contaminant and radionuclide sampling to the executive director; 30 TAC §290.122(a)(2), by failing to provide public notification regarding an acute maximum contaminant level violation for nitrate; TWC, §5.702 and 30 TAC §290.51(a)(3), by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Account Number 91650077 for Fiscal Years 2011 and 2012; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to 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 §290.106(e), by failing to provide the results of the quarterly nitrate/nitrite sampling to the executive director for the third quarter of 2011 and the first and second quarters of 2012; and 30 TAC §290.113(e), by failing to provide the results of triennial sampling for Stage I disinfection by-products to the executive director for the January 2, 2009 - December 31, 2011, monitoring period; PENALTY: $1,307; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0568; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5406, (432) 570-1359.

TRD-201300688
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 19, 2013

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 1, 2013.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 1, 2013.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: D. TRAN, INC. d/b/a Manns Chevron 2; DOCKET NUMBER: 2012-1035-PST-E; TCEQ ID NUMBER: RN102260213; LOCATION: 2707 Northeast Loop 410, San Antonio, Bexar County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $5,000; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: SHEZ Inc d/b/a Getty Food Mart; DOCKET NUMBER: 2011-2116-PST-E; TCEQ ID NUMBER: RN102354107; LOCATION: 1301 North Getty Street, Uvalde, Uvalde County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to review a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST system; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $7,609; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Vicki Helsel d/b/a Bootsies; DOCKET NUMBER: 2012-1028-PST-E; TCEQ ID NUMBER: RN102437365; LOCATION: Farm-to-Market Road 1513 and Highway 42, New London, Rusk County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(a) and

(c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the UST system for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $8,883; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201300686
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 19, 2013

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Notice of Water Quality Applications

The following notices were issued on February 8, 2013 through February 15, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF SUNRAY has applied for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010296001 to authorize relocating the outfall closer to the facility and upstream of a now nonexistent impoundment. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 1 mile northeast of the intersection of Farm-to-Market Road 119 and Farm-to-Market Road 281 in Moore County, Texas 79086.

CITY OF HAMILTON has applied for a renewal of TPDES Permit No. WQ0010492002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 880,000 gallons per day. The facility is located approximately 1,900 feet east of U.S. Highway 281 in the City of Hamilton and located immediately south of Pecan Creek at a point 2,800 feet north of State Highway 36 in Hamilton County, Texas.

FOREST HILLS MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011807001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located at 12601 Brookvale Drive, south of Frick Road, approximately 2.5 miles northwest of the intersection of West Mount Houston Road and Veterans Memorial Boulevard (formerly Stuebner-Airline Road) in Harris County, Texas 77038.

TINA LEE TILLES has applied for a renewal of TPDES Permit No. WQ0011900001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,700 gallons per day. The facility is located at 15219 Stuebner-Airline Road, between Farm-to-Market Road 1960 and Cypress Creek, just south of the Intersection of Stuebner-Airline Road and Strack Road in the City of Houston in Harris County, Texas 77069.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 104 has applied for a renewal of TPDES Permit No. WQ0011925001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 5,500 feet west of Interstate Highway 45 and 2.1 miles northwest of the intersection of Farm-to-Market Road 1960 and Interstate Highway 45, on the east bank of Seals Gully (Harris County Flood Control Ditch K124-00-00) in Harris County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 16 has applied for a renewal of TPDES Permit No. WQ0011935001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The facility is located at 6303 Bowtrail Street, Houston approximately 5,800 feet southwest of the intersection of Farm-to-Market Road 529 (Spencer Road) and State Highway 6 in Harris County, Texas 77084.

SHELBYVILLE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013370001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 11,250 gallons per day. The facility is located 1,000 feet due south of the intersection of Farm-to-Market Road 417 and State Highway 87, on the west side of State Highway 87 in Shelby County, Texas.

SALADO UTILITY INC has applied for a renewal of TPDES Permit No. WQ0014898001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located north of the intersection of Shepard Drive and Farm-to-Market Road 2268, approximately 2,000 feet north from the end of Shepard Drive in Bell County, Texas 76571.

JIVANJI NOMAN BURHANI has applied for a new permit, proposed TPDES Permit No. WQ0015052001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility will be located on the northwest corner of the intersection of Farm-to-Market Road 565 and Interstate Highway 10 in Chambers County, Texas 77450. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of the TPDES Permit No. WQ0014787001 issued to City of Normangee, to authorize the use of chlorination to supplement disinfection on an intermittent basis as opposed to detention time only to meet the E. coli requirement of the permit. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located on Caney Creek; east of Farm-to-Market Road 39, approximately 1,800 feet north of County Line Road in Leon County, Texas 77871.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201300706
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 20, 2013

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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(s) during the period of February 4, through February 8, 2013. 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 web site. The notice was published on the web site on February 20, 2013. The public comment period for this project will close at 5:00 p.m. on March 22, 2013.

FEDERAL AGENCY ACTIONS:

Applicant: Samson Exploration, LLC; Location: The project site is located on a 731.64 square-miles area that includes wetlands, uplands, and open water habitat within and adjacent to waters of the U.S., including rivers, canals, lakes, and sloughs, in Brazoria and Galveston Counties, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Alcoa, Angleton, Christmas Point, Christmas Point OE S, Danbury, Dickenson, Hitchcock, Hoskins Mound, Lake Como, Liverpool, Manvel, Mustang Bayou, Oyster Creek, Rosharon, San Luis Pass, Sea Isle, Texas City, and Virginia Point, Texas. Center of Project - Latitude: 29.46267 North; Longitude -95.100492 West. Project Description: The applicant proposes to conduct a 3-D survey that requires the deployment of motion sensing devises (geophones/hydrophones or receivers), which would be placed at regular intervals of 220 feet along parallel receiver lines spaced 1,760 feet apart. Geophones would be utilized on land, and hydrophones would be utilized in open water areas and wetlands as applicable. The primary energy source within the project area would be explosive charges. The charge depth and configuration proposed consists of single 110-foot-deep holes drilled at intervals of 220 feet along each source line. Source line spacing on land, in wetlands, and in the Galveston Bay complex would be 1,760 feet. Each source location on land would be loaded with an 11-pound explosive charge, and the hole would be plugged in accordance with state regulations for the prevention of commingling of surface and ground water. In water, all source points will be plugged with bentonite (natural clay) and natural drill cuttings, where feasible. Airguns would be utilized as the energy source in the Gulf of Mexico. Airgun releases would occur at intervals of 220 feet along each source line, and source lines would be spaced 440 feet apart, parallel to one another. CMP Project No.: 13-1036 Type of Application: U.S.A.C.E. permit application #SWG-2012-00906 is being evaluated under §401 of the Clean Water Act (CWA).

Applicant: Velasco Drainage District; Location: The project site is located in the Sherwood Forest and Tamarind Woods Ditch, adjacent to FM 2004, in Richwood, Brazoria County, Texas. The project can be located on U.S.G.S. quadrangle map titled: Lake Jackson, Texas - Latitude: 29.07059 North; Longitude 95.41855 West. Project Description: The applicant proposes to re-slope and re-grad the Sherwood Forest Ditch to a 0.055% grade and re-grade and re-slope the Tamarind Woods Ditch to a 0.20% grade. Additionally, a low-water crossing will be constructed by pouring a concrete slab reinforced with rebar at the confluence of the two ditches. The low-water crossing will be approximately 12 feet wide and shapes as a trapezoid which will be 27 feet long along one side and 52 feet long on the other side. The low-water crossing will allow passage of maintenance vehicles. Approximately 4.5 cubic yards of concrete and 750 cubic yards of clay will be placed within 13,470 square feet of drainage way bottom. The Tamarind Woods Ditch is tidally influenced and jurisdictional for 157 feet, then rises sharply in grade to a non-jurisdictional, upland-cut drainage swales. The Sherwood Forest Ditch is approximately 1, 726 feel long and appears to have upstream drainage. The Sherwood Forest Ditch is tidally-influences for 700 feet and has flowing water and an ordinary high water mark all the way to FM 2004. The jurisdiction will be made by preliminary jurisdictional determination. CMP Project No.: 13-1042 Type of Application: U.S.A.C.E. permit application #SWG-2012-00757 is being evaluated under §404 of the Clean Water Act (CWA).

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 applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Sheri Land, Director, P.O. Box 12873, Austin, Texas 78711-2873, or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Land at the above address or by email.

TRD-201300718
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: February 20, 2013

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Thursday, March 14, 2013, at 1:30 p.m. to receive public comment on proposed payment rates for Paraprofessional Services and the Pre-Engagement Fee in the Youth Empowerment Services (YES) Waiver program. The Department of State Health Services operates this program. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed payment rates.

The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, 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. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to adopt rates for Paraprofessional Services and the Pre-Engagement Fee in the YES Waiver program. The proposed rates will be effective April 1, 2013, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodologies codified at 1 TAC §355.9060, Reimbursement Methodology for the Youth Empowerment Services Waiver Program.

Briefing Package. A briefing package describing the proposed payment rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on February 27, 2013. Interested parties also may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201300704
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: February 19, 2013

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Public Notice

The Texas Health and Human Services Commission is submitting to the Centers for Medicare and Medicaid Services a request for an amendment to the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver program, a Medicaid waiver program operating under the authority of §1115 of the Social Security Act. The Texas Healthcare Transformation Quality Improvement Program waiver program is currently approved for the five-year period beginning December 12, 2011, and ending September 30, 2016. The proposed effective date for the amendment is June 1, 2013.

The Texas Healthcare Transformation Quality Improvement Program serves as the vehicle that allows the state to expand the Medicaid managed care delivery system while preserving hospital funding, provides incentive payments for health care improvements and directs more funding to hospitals that serve large numbers of uninsured patients.

Medicaid managed care is implementing a promoting independence initiative in the STAR+PLUS Home Community Based Services Waiver program to prevent individuals in a crisis situation from entering a nursing facility. As part of the Department of Aging and Disability Services Legislative Appropriations Request for Promoting Independence in the 82nd Legislative Session, Department of Aging and Disability Services was appropriated 100 Community Based Alternatives nursing facility diversion slots for the 2012 and 2013 biennium. Of the appropriated amount, 67 slots have been identified for use in the STAR+PLUS Home Community Based Services Waiver program.

The purpose of the initiative is to prevent institutionalization of individuals who are at imminent risk of entering an NF as a result of a catastrophic episode. Examples of a catastrophic episode include:

- An individual is significantly dependent on a caregiver to remain in the community and the caregiver passes away or is suddenly no longer able to provide care.

- An individual has a community support system, but must suddenly relocate to where there is no support system.

- Any situation where an individual has a sudden occurrence that would cause imminent placement in a nursing facility and the individual cannot care for himself or herself.

- An individual is identified by Adult Protective Services as being at imminent risk of nursing facility placement.

In addition, to the promoting independence initiative, the Health and Human Services Commission is also seeking an amendment to the Adult Foster Care rules. Currently, this rule has a provision that does not allow family members to serve as caregivers. This amendment will remove the restriction and allow a member to select a relative or legal guardian, other than a spouse, to be the member's provider for this service.

The Texas Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning June 1, 2013 through September 30, 2016. The amendment does not impact budget neutrality.

To obtain copies of the proposed waiver amendment, interested parties may contact Meisha Scott by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1315, fax (512) 491-1957, or by email at Meisha.Scott@hhsc.state.tx.us.

TRD-201300676
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: February 15, 2013

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Rolls Wood Group Repair and Overhaul USA, Inc.	L06531	Houston	00	01/22/13
Port Arthur	Leonard M. Thome, M.D., P.A.	L06529	Port Arthur	00	01/18/13
Throughout TX	Oil Mop, L.L.C. dba Omi Environmental Solutions	L06528	La Porte	00	01/15/13
Throughout TX	CIMA Services, L.P.	L06530	South Houston	00	01/22/13

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Athens	East Texas Medical Center	L02470	Athens	44	01/18/13
Austin	Texas Oncology, P.A. South Austin Cancer Center	L05108	Austin	25	01/22/13
Austin	Capital Cardiovascular Consultants	L05590	Austin	19	01/15/13
Austin	Seton Family of Hospitals dba University Medical Center at Brackenridge	L00268	Austin	122	01/25/13
Big Spring	Alon USA, L.P.	L04950	Big Spring	14	01/23/13
Bridgeport	West 380 Family Care Facility dba North Texas Community Hospital	L06456	Bridgeport	01	01/17/13
Comanche	Comanche County Medical Center Company dba Comanche County Medical Center	L06200	Comanche	07	01/28/13
Corpus Christi	Rock Engineering and Testing Laboratory Inc.	L05168	Corpus Christi	12	01/24/13
Dallas	Triad Isotopes, Inc.	L06334	Dallas	04	01/16/13
Dallas	Rosa of North Dallas, L.L.C.	L06186	Dallas	06	01/16/13
Denton	University of North Texas Risk Management Services	L00101	Denton	91	01/24/13
El Paso	Tenet Hospitals Limited dba Sierra Medical Center	L04758	El Paso	30	01/24/13
Fort Worth	University of North Texas Health Science Center Fort Worth	L02518	Fort Worth	42	01/11/13
Fort Worth	Baylor All Saints Medical Center Radiology Department	L02212	Fort Worth	90	01/15/13
Fort Worth	Professional Service Industries, Inc.	L00931	Fort Worth	119	01/22/13
Harlingen	Texas Oncology, P.A. dba South Texas Cancer Center Harlingen	L00154	Harlingen	41	01/29/13
Houston	CHCA West Houston, L.P. dba West Houston Medical Center	L06055	Houston	16	01/22/13
Houston	MH/USON Radiation Management Company, L.L.C.	L06408	Houston	08	01/16/13
Houston	The University of Texas MD Anderson Cancer Center	L06227	Houston	26	01/24/13
Houston	Houston Northwest Operating Company, L.L.C. dba Houston Northwest Medical Center	L06190	Houston	18	01/16/13
Houston	Nuclear Imaging Services, L.L.C.	L05791	Houston	13	01/23/13
Houston	Mukarram Ali Baig, M.D., P.A. dba Heart Care Center of Northwest Houston	L05539	Houston	16	01/22/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	GE Oil and Gas Logging Services, Inc.	L05262	Houston	47	01/29/13
Houston	Institute of Biosciences and Technology	L04681	Houston	38	01/15/13
Houston	Woodlands-North Houston Cardiovascular	L04253	Houston	28	01/15/13
Houston	Ben Taub General Hospital Nuclear Medicine	L01303	Houston	76	01/18/13
Houston	Ben Taub General Hospital Nuclear Medicine	L01303	Houston	77	01/28/13
Irving	Incipit Medical Physics, Inc. dba Medical Physics Consultants	L06522	Houston	01	01/29/13
Laredo	Laredo Texas Hospital Company, L.P. dba Laredo Medical Center	L01306	Laredo	76	01/16/13
Luling	Luling Perforators, Inc.	L05870	Luling	04	01/16/13
Midland	Midland County Hospital District dba Midland Memorial Hospital	L00728	Midland	102	01/16/13
Mission	Mission Hospital, Inc. dba Mission Regional Medical Center	L06192	Mission	03	01/16/13
Mount Pleasant	Luminant Generation Company, L.L.C.	L04565	Mount Pleasant	17	01/25/13
Nassau Bay	Christus Health dba Christus St. John Hospital	L03291	Nassau Bay	37	01/24/13
Plano	Vista Pem Providers, L.L.C.	L06341	Plano	01	01/16/13
Plano	North Texas Pem Partners, L.L.C.	L06340	Plano	01	01/16/13
Plano	Texas Heart Hospital of the Southwest, L.L.P. dba The Heart Hospital Baylor Plano	L06004	Plano	24	01/16/13
Plano	Baylor Regional Medical Center of Plano	L05844	Plano	12	01/29/13
Rockdale	Rockdale Blackhawk, L.L.C. dba Little River Healthcare	L06092	Rockdale	05	01/29/13
Rockdale	Rockdale Blackhawk, L.L.C. dba Little River Healthcare	L06092	Rockdale	06	01/22/13
San Antonio	Wellmed Networks, Inc. dba Specialists for Health NE Cardiology	L06448	San Antonio	02	01/23/13
San Antonio	Petnet Solutions, Inc.	L05569	San Antonio	26	01/29/13
San Antonio	Southwest Genetics, P.A.	L04490	San Antonio	15	01/29/13
San Antonio	VHS San Antonio Imaging Partners, L.P. dba Baptist M&S Imaging Centers	L04506	San Antonio	84	01/29/13
San Antonio	Cardiovascular Associates of San Antonio, P.A.	L04996	San Antonio	17	01/29/13
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	144	01/23/13
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	312	01/29/13
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	211	01/28/13
Sulphur Springs	Hopkins County Memorial Hospital	L02904	Sulphur Springs	22	01/30/13
Tatum	Luminant Mining Company, L.L.C.	L06081	Tatum	12	01/25/13
Tyler	Tyler Internal Medicine Associates, P.A.	L05597	Tyler	08	01/16/13
Tyler	Cardiovascular Associates of East Texas, P.A.	L04800	Tyler	30	01/16/13
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	180	01/17/13
Victoria	Invista Sarl	L00386	Victoria	87	01/18/13
Winnsboro	Mother Frances Hospital-Winnsboro	L03336	Winnsboro	34	01/16/13
Winnsboro	Mother Frances Hospital-Winnsboro	L03336	Winnsboro	35	01/29/13
Throughout TX	Desert NDT, L.L.C. dba Midwest Inspection Services	L06462	Abilene	07	01/31/13
Throughout TX	Gray Wireline Service, Inc.	L03541	Fort Worth	44	01/29/13
Throughout TX	Halliburton Energy Services, Inc.	L02113	Houston	122	01/28/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Quality Inspection & Testing, Inc.	L06371	Houston	04	01/30/13
Throughout TX	Spitzer Industries, Inc.	L06483	Houston	02	01/23/13
Throughout TX	Marco Inspection Service, L.L.C.	L06072	Kilgore	43	01/28/13
Throughout TX	J-W Wireline Company	L06132	Addison	20	01/28/13
Throughout TX	Lotus, L.L.C.	L05147	Andrews	25	01/29/13
Throughout TX	Mandes Inspection & Testing Services, Inc.	L05220	Houston	72	01/28/13
Throughout TX	Turner Specialty Services, L.L.C.	L05417	Nederland	43	01/28/13
Throughout TX	Techcorr USA, Inc. dba Aut Specialists, L.L.C.	L05972	Palestine	93	01/16/13
Throughout TX	CIMA Services, L.P.	L06530	South Houston	01	01/25/13
Throughout TX	Acuren Inspection, Inc.	L01774	La Porte	273	01/28/13
Throughout TX	American X-Ray & Inspection Service, Inc	L05974	Midland	31	01/17/13
Throughout TX	J. Z. Russell Industries, Inc.	L06459	Nederland	05	01/30/13
Throughout TX	Pioneer Wireline Service, L.L.C	L06220	Rosharon	24	01/30/13
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	133	01/28/13
Throughout TX	Thermo Process Instruments, L.P. a Subsidiary of Thermo Fisher Scientific, Inc.	L03524	Sugar Land	83	01/11/13

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Escot NDE, Inc. dba Basin Industrial X-Ray	L05002	Corpus Christi	33	01/29/13
Throughout TX	Weldsonix, Inc.	L05718	Houston	44	01/23/13

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Seton Family of Hospitals dba Seton Medical Center Austin	L02896	Austin	133	01/25/13
Austin	Seton Family of Hospitals dba Seton Medical Center Williamson Imaging Department	L06128	Austin	21	01/31/13
Austin	Seton Family of Hospitals dba Seton Medical Center Hays	L06254	Austin	13	01/25/13
Austin	Seton Family of Hospitals dba Dell Children's Medical Center of Central Texas	L06065	Austin	28	01/25/13
Burnet	Seton Family of Hospitals dba Seton Highland Lakes Hospital	L03515	Burnet	50	01/25/13
Conroe	Montgomery County Management Company, L.L.C	L04899	Conroe	36	01/29/13
Houston	Allied Testing Laboratories, Inc.	L00880	Houston	45	01/30/13
Houston	Columbia/HCA Healthcare Corporation dba Spring Branch Medical Center	L02473	Houston	77	01/23/13
Kyle	Seton Family of Hospitals dba Seton Smithville Regional Hospital	L06492	Kyle	01	01/25/13
Port Arthur	Smith and Thome Cardiovascular Consultants, L.L.P.	L05743	Port Arthur	07	01/18/13
Throughout TX	Pathfinder Energy Services, L.L.C.	L05236	Katy	27	02/01/13

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injur or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201300696
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: February 19, 2013

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Texas Department of Housing and Community Affairs

Request for Proposals for Uniform Physical Condition Standards Inspections

SUMMARY. The Texas Department of Housing and Community Affairs (the "Department") announces a Request for Proposal (RFP) for Uniform Physical Condition Standards Inspections.

POSTING DATE AND DEADLINE FOR SUBMISSION.

The RFP will be posted in the Electronic State Business Daily (ESBD) on FRIDAY, MARCH 1, 2013, RFP# 332-RFP13-1001.

The submission deadline in response to the RFP is 4:00 p.m., Central Daylight Saving Time, THURSDAY, MARCH 28, 2013. No submittal received after the deadline will be considered. No incomplete, unsigned, or late qualification summaries will be accepted after the deadline, unless the Department determines, in its sole discretion, that it is in the best interest of the Department to do so.

Individuals or firms interested in submitting a proposal should visit our website at: http://www.tdhca.state.tx.us/ under the "What's New" section or visit http://esbd.cpa.state.tx.us/ for a complete copy of the RFP. Throughout the procurement process, all questions relating to this RFP must be submitted to the Department in writing to Julie Dumbeck at julie.dumbeck@tdhca.state.tx.us.

PLACE AND METHOD OF QUALIFICATION DELIVERY.

Proposals shall be delivered to:

Texas Department of Housing and Community Affairs

Attention: Julie Dumbeck

Mailing Address:

P.O. Box 13941

Austin, TX 78711-3941

Physical Address for Overnight Carriers:

221 East 11th Street

Austin, Texas 78701-2410

(512) 475-3991

TRD-201300715
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 20, 2013

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Texas Department of Insurance

Company Licensing

Application to change the name of PENNSYLVANIA GENERAL INSURANCE COMPANY to PENNSYLVANIA INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Philadelphia, Pennsylvania.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201300695
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: February 19, 2013

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Company Licensing

Application to change the name of BROKERS NATIONAL LIFE ASSURANCE COMPANY to AURIGEN REINSURANCE COMPANY OF AMERICA, a foreign Life, Accident and/or Health company. The home office is in Sherwood, Arkansas.

Application for admission to the State of Texas by ARK ROYAL INSURANCE COMPANY, a foreign Fire and /or Casualty company. The home office is in St. Petersburg, Florida.

Application for admission to the State of Texas by MEDMAL DIRECT INSURANCE COMPANY, a foreign Fire and /or Casualty company. The home office is in Jacksonville, Florida.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Regis-*

ter publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201300705
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: February 20, 2013

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Texas Department of Insurance, Division of Workers' Compensation

Notice of Meeting

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will hold a meeting on Wednesday, April 10, 2013 at 10:00 a.m. CDT in the Tippy Foster Room of the Division's Central Office, 7551 Metro Center Drive, Suite 100 in Austin, Texas. At this meeting, the Commissioner of Workers' Compensation (Commissioner) will consider a Proposal for Decision issued on December 20, 2012, by the State Office of Administrative Hearings (SOAH) in the matter of Texas *Department of Insurance, Division of Workers' Compensation, Petitioner v. Center For Injured Workers, Inc., Respondent;* SOAH Docket No. 454-12-1463.C1. This posting is made pursuant to §148.16(f) of Title 28 of the Texas Administrative Code. The Commissioner will provide up to 20 minutes at the meeting for each party or the party's representative to this matter to address the Commissioner concerning any action that the party proposes that the Commissioner should take concerning the SOAH Proposal for Decision. The parties to this matter will be notified of the final decision of the Commissioner by verifiable means.

The Division provides reasonable accommodations for person attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require accommodations in order to attend this meeting, contact Idalia Salazar at (512) 804-4403 a minimum of two business days prior to the meeting date.

If there are any questions regarding the information in this notice, contact Craig H. Smith at (512) 804-4047 or craig.smith@tdi.texas.gov.

TRD-201300723
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: February 20, 2013

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Texas Lottery Commission

Instant Game Number 1540 "Loteria® Texas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1540 is "LOTERIA® TEXAS". The play style is "row/column".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1540 shall be $3.00 per Ticket.

1.2 Definitions in Instant Game No. 1540.

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: THE ARROWS SYMBOL, THE BELL SYMBOL, THE BOOT SYMBOL, THE CACTUS SYMBOL, THE CANOE SYMBOL, THE CROWN SYMBOL, THE DEER SYMBOL, THE DRUM SYMBOL, THE FISH SYMBOL, THE FLOWERPOT SYMBOL, THE FROG SYMBOL, THE HAND SYMBOL, THE LADDER SYMBOL, THE MERMAID SYMBOL, THE MOON SYMBOL, THE MUSICIAN SYMBOL, THE PARROT SYMBOL, THE PEAR SYMBOL, THE PITCHER SYMBOL, THE ROOSTER SYMBOL, THE ROSE SYMBOL, THE STAR SYMBOL, THE SUN SYMBOL, THE TREE SYMBOL, THE UMBRELLA SYMBOL, THE CELLO SYMBOL, THE WATERMELON SYMBOL, THE WORLD SYMBOL and THE BARREL SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1540 - 1.2D

PLAY SYMBOL	CAPTION
THE ARROWS SYMBOL	THE ARROWS
THE BELL SYMBOL	THE BELL
THE BOOT SYMBOL	THE BOOT
THE CACTUS SYMBOL	THE CACTUS
THE CANOE SYMBOL	THE CANOE
THE CROWN SYMBOL	THE CROWN
THE DEER SYMBOL	THE DEER
THE DRUM SYMBOL	THE DRUM
THE FISH SYMBOL	THE FISH
THE FLOWERPOT SYMBOL	THE FLOWERPOT
THE FROG SYMBOL	THE FROG
THE HAND SYMBOL	THE HAND
THE LADDER SYMBOL	THE LADDER
THE MERMAID SYMBOL	THE MERMAID
THE MOON SYMBOL	THE MOON
THE MUSICIAN SYMBOL	THE MUSICIAN
THE PARROT SYMBOL	THE PARROT
THE PEAR SYMBOL	THE PEAR
THE PITCHER SYMBOL	THE PITCHER
THE ROOSTER SYMBOL	THE ROOSTER
THE ROSE SYMBOL	THE ROSE
THE STAR SYMBOL	THE STAR
THE SUN SYMBOL	THE SUN
THE TREE SYMBOL	THE TREE
THE UMBRELLA SYMBOL	THE UMBRELLA
THE CELLO SYMBOL	THE CELLO
THE WATERMELON SYMBOL	THE WATERMELON
THE WORLD SYMBOL	THE WORLD
THE BARREL SYMBOL	THE BARREL

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 $3.00, $4.00, $7.00, $10.00, $17.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $33.00, $50.00, $80.00 or $300.

H. High-Tier Prize - A prize of $3,000 or $33,000.

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 (1540), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1540-0000001-001.

K. Pack - A Pack of "LOTERIA® TEXAS" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of Ticket 001 and the back of Ticket 125. Configuration B will show the back of Ticket 001 and the front of Ticket 125.

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 "LOTERIA® TEXAS" Instant Game No. 1540 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, 16 TAC §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 "LOTERIA® TEXAS" Instant Game is determined once the latex on the Ticket is scratched off to expose up to 30 (thirty) Play Symbols. The player scratches off the CALLER'S CARD area to reveal 14 symbols. The player scratches only the symbols on the LOTERIA® CARD that match the symbols revealed on the CALLER'S CARD to reveal a bean. The player reveals 4 beans in any complete horizontal or vertical line in the LOTERIA® CARD to win the prize for that line. 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 30 (thirty) 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 30 (thirty) 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 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 30 (thirty) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets will not have identical play data, spot for spot.

B. A Ticket may win up to three (3) times per the prize structure.

C. No adjacent Tickets will contain identical CALLER'S CARD Play Symbols in exactly the same locations.

D. No duplicate Play Symbols in the CALLER'S CARD play area.

E. There will be no occurrence of all 4 symbols in either diagonal matching the CALLER'S CARD symbols.

F. At least 8, but no more than 12, CALLER'S CARD Play Symbols will match a symbol on the LOTERIA® CARD on a Ticket.

G. There will be no duplicate Play Symbols on a LOTERIA® CARD as indicated in the artwork section.

H. Each LOTERIA® CARD will have an occurrence of the rooster symbol as indicated in the artwork section.

2.3 Procedure for Claiming Prizes.

A. To claim a "LOTERIA® TEXAS" Instant Game prize of $3.00, $4.00, $7.00, $10.00, $17.00, $20.00, $30.00, $33.00, $50.00, $80.00 or $300, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $33.00, $50.00, $80.00 or $300 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 "LOTERIA® TEXAS" Instant Game prize of $3,000 or $33,000, 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 "LOTERIA® TEXAS" 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 "LOTERIA® TEXAS" 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 "LOTERIA® TEXAS" 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 20,160,000 Tickets in the Instant Game No. 1540. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1540 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	2,741,760	7.35
$4	645,120	31.25
$7	564,480	35.71
$10	362,880	55.56
$17	322,560	62.50
$20	322,560	62.50
$30	33,600	600.00
$33	16,800	1,200.00
$50	15,960	1,263.16
$80	13,440	1,500.00
$300	10,080	2,000.00
$3,000	300	67,200.00
$33,000	40	504,000.00

*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 3.99. 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. 1540 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. 1540, 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-201300685
Bob Biard
General Counsel
Texas Lottery Commission
Filed: February 19, 2013

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Public Utility Commission of Texas

Notice of Application for Approval of Accelerated Depreciation Rate

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 14, 2013, for approval of an accelerated depreciation rate pursuant to §52.252 and §53.056 of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. (Vernon 2007 and Supp. 2012). A summary of the application follows.

Docket Title and Number: Application of Hill Country Telephone Cooperative, Inc. for Approval of Accelerated Depreciation Rate Pursuant to P.U.C. Substantive Rule §26.206, Docket Number 41226.

The Application: Hill Country Telephone Cooperative, Inc. (Hill Country) filed an application for approval of an accelerated depreciation rate for ADSL blade equipment in Account No. 2232.2000 associated with digital subscriber circuit equipment. Hill Country seeks to accelerate the depreciation rates for this equipment due to a plan to replace the equipment with improved technology. To properly account for the equipment Hill Country will move it to a new sub account, Account No. 2232.201 - ADSL2+ Blades, and create a separate reserve account for depreciation associated with the ADSL blade equipment, Account No. 3100.2201. Hill Country requests an effective date of January 1, 2012.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, 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 telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 41226.

TRD-201300697
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 19, 2013

♦ ♦ ♦

Notice of Proposed Revisions to Forms

The Public Utility Commission of Texas (commission) requests comments on its proposed changes to the form for an Application for an Amendment to Certificate of Convenience and Necessity for Service Area Boundary Changes and the instructions for Monthly Transmission Construction Progress Report for Electric Utilities. The proposals can be found on the commission's website home page under "Filings," using Control Number 40511. The application form is used by electric utilities to change their service area boundaries pursuant to P.U.C. Substantive Rule §25.101. The report instructions describe the required components of monthly transmission construction progress reports pursuant to P.U.C. Substantive Rule §25.83.

Comments on the proposed form and instructions may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the form and instructions are required to be filed. Initial comments are due March 22, 2013, and reply comments are due March 29, 2013.

On the form for an Application for an Amendment to Certificate of Convenience and Necessity for Service Area Boundary Changes, the commission asks interested parties to suggest suitable digital alternatives to shapefiles if that format is inconvenient and explain why such alternatives would be preferable.

Questions concerning this notice should be referred to Jennifer Hubbs, Infrastructure and Reliability Division, at (512) 936-7233 or Jason Haas, Legal Division, at (512) 936-7295. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

PURSUANT TO PUC SUBSTANTIVE RULE §25.101

Application for an Amendment to Certificate of Convenience and Necessity for Service Area Boundary Changes

Docket Number:
7 copies of the application, including the original, along with one copy of the portable electronic storage medium (such as CD or DVD) containing the GIS data shall be filed with Public Utility Commission of Texas Attention: Filing Clerk 1701 N. Congress Avenue P.O. Box 13326 Austin, Texas 78711-3326 No later than seven days after filing the application for the boundary change, provide a copy of each paper map and a portable electronic storage medium (such as CD or DVD) containing complete and identical data to the portable electronic storage medium submitted above to Texas Natural Resources Information System 1700 N. Congress Ave, Room B40 Austin, Texas 78701

Part A – Applicant Information

1. Applicant	
Utility name:	
Certificate number:	
Street address:	
Mailing address:	
2. Contact information	
Name:	Title:
Mailing address:	
Email:	Phone:
Alternate:	Title:
Mailing address:	

Email:	Phone:
Legal counsel:	Bar number:
Mailing address:	
Email:	Phone:

3. Other affected utility (if more than one, submit information for 3 and 4 on separate sheet labeled "Attachment A3")

Utility name:	
Certificate number:	
Street address:	
Mailing address:	

4. Other affected utility contact information

Name:	Title:
Mailing address:	
Email:	Phone:
Alternate:	Title:
Mailing address:	
Email:	Phone:
Legal counsel:	Bar number:
Mailing address:	
Email:	Phone:

Part B – Effects

1. Counties

List all counties involved in the proposed boundary change:

2. Municipalities

List all municipalities involved in the proposed boundary change. Attach a copy of the franchise, permit, or other evidence (labeled "Attachment B2") of the city's consent held by the utility. If franchise, permit, or other evidence of the city's consent has been previously filed, provide only the docket number of the application in which the consent was filed:

3. Affected utilities

Identify any other utility providing electric service whose existing certificated service area boundary would be affected by the proposed change. State whether the applicant(s) has obtained the agreement of the other affected utilities. Attach a copy of any written agreements with the applicant(s) and other affected utilities (labeled "Attachment B3"):

Identify any other utility serving the proximate area and the effect on that utility of granting the certificate to the recipient of the certificate:

4. §37.056 Criteria

Describe the effect of the proposed boundary change on the community values, recreational and park areas, historical and aesthetic values, and environmental integrity. Describe the effect of the proposed boundary change as it relates to the improvement of service or the lowering of cost to consumers in the affected area:

Part C – Need and Costs

1. Justifications

State the reasons why the proposed boundary change is being requested, including a description of new loads to be served and new facilities to be constructed if the application is granted:

2. Reasons

Describe the existing service in the area affected by the application and explain the need for additional service:

3. Estimated costs

State the amount of money expected to be expended on new facilities if the application is granted:

Part D – Maps

1. Paper maps

Base maps (labeled "Attachment D1") shall be a full scale (one inch = one mile) highway map of the county or counties involved, a USGS 7-minute topographical map, subdivision plat map, or other map of comparable scale with sufficient cultural and natural features to permit location of the proposed service area amendment in the field. Show all existing boundaries and the proposed boundaries affected by this application. Show any existing or proposed distribution or transmission lines affected by this application.

2. GIS maps

Two portable electronic storage media (such as CDs or DVDs) containing complete and identical data shall be submitted with this application.

All shapefiles shall contain at least four files including, at a minimum:

- .shp – shape format; the feature geometry itself;
- .shx – shape index format; a positional index of the feature geometry to allow seeking forwards and backwards quickly;
- .dbf – attribute format; columnar attributes for each shape in dBase IV format; and
- .prj – projection format; the coordinate system and projection information as a plain text file describing the projection using well-known text format.

Service area boundaries shall be submitted as a **polygon**. Polygons shall be closed without breaks. Intersecting polygons shall be snapped at the intersection without gaps or overshoots. Polygons with common borders shall share a border line to avoid slivers and gaps between polygons.

All files shall have **projection information** embedded in the file. This information is stored in the .prj file. The projection file provides a mathematical process that transforms feature locations from the earth's curved surface to a map's flat surface. The projected coordinates system employs a projection to transform locations expressed as latitude and longitude values to X,Y coordinates. Without the projection information, the files may not overlay accurately.

All data shall be provided in a **scale** of 1:24,000 and shall conform to the accuracy standards described in USGS Fact Sheet FS-171-99 or successor Map Accuracy Standards.

Shapefiles shall contain the appropriate attribution to allow the layer to be symbolized according to what the layer is and what it represents. A service area boundary shapefile that is supposed to represent a utility's service territory shall have the appropriate attributes in the file to see the utility's name, for example. The other attributes shall also be included in the file. ***The following attributes for service territory boundaries are required and shall follow these naming conventions exactly, minus the information in the parentheticals.***

- Utility name
- Type of utility (investor-owned utility/municipally-owned utility/electric cooperative [whichever term applies])
- RTO/ISO (whichever RTO or ISO applies)
- Customers (the total number of customers the utility serves)
- Counties (list all the counties the utility serves, wholly or in part)

Part E – Affidavit

Affidavit

Attach a sworn affidavit (labeled "Attachment E") from a qualified individual authorized by the applicant to verify and affirm that, to the best of his/her knowledge, all information provided, statements made, and matters set forth in this application and attachments are true and correct. The affidavit shall also confirm that the paper map and portable electronic storage medium containing the GIS data were sent to TNRIS.

Pursuant to PUC SUBSTANTIVE RULE §25.83

Instructions for Monthly Transmission Construction Progress Report for Electric Utilities

Purpose

Substantive Rule 25.101 (Certification Criteria) requires the reporting of electric transmission construction activities, either planned or in progress. The reporting requirements for those activities are set forth in §25.83 (Construction Reports). Transmission Construction Progress Reports shall be filed at the address below under the project number assigned by Staff at the first of each calendar year. Designated CREZ TSPs are not required to provide construction costs for CREZ projects under this project number but are required to conform to §25.216(f) by filing in Project No. 37858.

Public Utility Commission of Texas
Attention: Filing Clerk
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

The purpose of this form is to provide the Commission and public a concise picture of all major transmission projects that are planned or under construction by the electric utilities.

General Instructions

This report shall be used to report all proposed and in progress transmission facility projects except those that are considered routine maintenance *and* are less than $250,000. Projects requiring CCNs shall be reported in the first regularly scheduled construction report after initial filing of the CCN application. Projects NOT requiring CCNs shall be reported at least 45 days before construction commences. Projects shall be listed on the form chronologically with the oldest projects at the top. After the final cost is reported, the project shall then be dropped from the list.

Construction progress on all transmission projects, except for the routine maintenance (with an estimated cost less than $250,000) exception listed above, shall be reported on this form. The report shall be filed by the 15th of each month for activity through the end of the prior calendar month, with interim reports filed as necessary to comply with the 45 day advance notice reporting requirement of §25.83(c)(1).

The project number must conspicuously appear at the top of the MCPR form, and cover sheets shall not be filed unless a document other than the report form is included (i.e., an Affidavit or other explanatory document). Three paper copies on legal sized (8½ x 14) paper and one copy on letter sized (8½ x 11) shall be filed in Central Records. Also one copy, preferably in Microsoft Excel, shall be electronically mailed to monthlyreports@puc.texas.gov. The electronic file name shall have the acronym of the reporting utility followed by the two digit month and two digit year (i.e., CNP0312.xls for CenterPoint Energy's March 2012 report which shall include the construction status through the last day of February). An interim report shall follow the same form as the regular report except that the electronic file name shall end in "I" (i.e., CNP0312i for an interim report filed during March 2012).

Locational coordinate point data and attribute data shall be supplied for new lines that are reported under §25.83 and, at a minimum, for any changes to an existing line that alter the location or direction of the line or any portion thereof, should any segment of the altered line fall outside of the existing right-of-way. Locational coordinate point data shall be supplied for the start and endpoints of the line and for every point at which the line changes direction in between. The information supplied shall be complete and accurate. Locational coordinate point data and attribute data shall also be supplied for new substations as described below. Data may be submitted as either (1) a shapefile as described below or (2) an xls or xlsx spreadsheet as described below.

The locational coordinate point data and attribute data relate to critical infrastructure as defined in Government Code §421.001 and are exempt from public disclosure under §§418.177, 418.181 and 552.101. The data shall be submitted in **both** of two formats: (1) on a CD, DVD or other portable media, filed confidentially with Central Records and (2) via the PUC portal or other secure means of data transmittal prescribed by the Commission. Both should be entitled "Locational coordinate point data for (company name) (your project number)." The data shall be submitted within 120 days of energization or reenergization of the line.

These forms do not limit the Commission's ability to ask for supporting information, and Staff may request additional information at any time. Staff may request that reporting utilities provide a cost breakdown when the final costs have been determined ***for CCN projects only***.

Please email requests for further information to monthlyreports@puc.texas.gov or chris.roelse@puc.texas.gov or call Chris Roelse at (512) 936-7356.

Specific Instructions

The Monthly Transmission Construction Progress Report shall employ the columns and fields exactly as described below, as they appear on the sample form available on the PUC website. The spreadsheet shall be submitted as a native file (xls or xlsx).

Spreadsheet Column	Column Title:	NOTES: 1. Please use "na" whenever appropriate to reduce ambiguity, ***except*** *in the "Costs," "Percent Complete," and "Percent Variance" columns.* 2. Any new or revised entry ***must*** be entered using a **red font**. In the month following the red font entry, change the previous month's red entries back to black and make any new entries for the new month in red. This aids PUCT staff in quickly identifying any changes from the previous month's report. 3. On the final monthly report on an existing line in which one of the attributes as listed in the attribute spreadsheets below has changed, enter that data in a bolded green font.
A	Utility's Project Number	Enter the Utility's Project Number. No duplicate numbers are allowed in this column.

B	Project Name	Enter the name of the project. If possible, use the same name as was reported to ERCOT in any reports.
C	Location (City/County)	Enter the names of the counties where the project is located. Also enter the names of cities, if appropriate. Please delineate all county and city names with commas only. (e.g., Liberty, Chambers, Anahuac, etc.)
D	Description	Describe the project in enough detail to allow the Commission to ensure that the work does not require a CCN, if the utility does not intend to apply for a CCN. Include any significant or relevant detail not being reported in other columns.
E	Estimated (or Actual) Start Date	Enter the estimated project starting date. ***When construction begins, please replace the estimated date with the actual date of the start of construction.***
F	Finish Date (Construction Complete)	Enter the date (mm/dd/yy) when the construction related to the project has been completed.
G	Date Energized (If Applicable)	Enter the date (mm/dd/yy) the project was energized or restored to service (if applicable).
H	Initial Estimated Project Cost	**CCN Projects Only:** Enter the estimated cost from the CCN application. When reporting both T-Line and Substation Costs, enter them separately in the same cell. (e.g., "$3,946,000 T-Line; $1,768,000 Substation") This number shall not be changed in future months unless the Application is amended. ***Please DO NOT use links to other sheets within the workbook.*** **Non-CCN Projects Only:** ***No entry is needed;*** Enter the estimated cost in the Final Estimated Cost column.
I	Final Estimated Project Cost	**CCN Projects:** Enter the latest available estimated cost for the month that construction starts. This number shall not be changed after construction begins. **For Non-CCN Projects: Enter the initial estimated cost.** Estimate revisions are not necessary, and a cost variance explanation is not required unless requested by PUC Staff .
J	Final Actual Project Cost	Enter the actual, final project cost after the project has been energized and all costs have been recorded. ***Omit the project from all following reports.***
K	% Variance	The cells contain a formula for calculating the percent variance of the final ***actual*** cost with respect to the final ***estimated*** cost. This is essentially a calculation of the percent of the cost over-run or under-run. ***Please do not change these cells.***
L	Percent Complete	State the construction progress of the project as a percent. ***Please use only an integer and do not write"%." Do not report the percent of money spent.***
M	Existing Voltage (kV)	Enter the nominal system existing voltage, if any. In the event of a voltage upgrade, this will be the "before" voltage. If the project is for a new line, enter "na." For projects involving multiple voltages, please delineate the voltages by a comma, (e.g., "69,138") ***Please do not write "volts."***

N	Upgraded or New Voltage	Enter the nominal system voltage after upgrading or if new line construction is involved. Please use the same practices described in the "Existing Voltage" column. ***Please do not write "volts."***
O	Circuit Length (Miles)	Enter the total circuit length. Example: For a new double-circuit line using 10 miles of new ROW, the circuit length would be 20 miles. Please enter only a number, if possible. ***Please do not write "miles."***
P	Conductor Type & Size & Bundling	Describe the conductor characteristics, including whether double or single circuit or mixed. Lengthy explanations shall be made in the Project Description column.
Q	Structure Type(s)	Describe structure types and materials used.
R	Existing ROW Width (Feet)	Enter width of existing ROW. The entry type is unrestricted. If the project is only for new line and no old ROW exists, enter "na." Entries such as "60,80,100" or "60 - 100" or "centerline" are permissible. Make detailed explanations, if needed, elsewhere. ***Please do not write "feet."***
S	Existing ROW Length (Miles)	Enter length of existing ROW. The entry type is unrestricted. If the project is only for new line and no old ROW exists, enter "na." Make detailed explanations, if needed, elsewhere. ***Please do not write "miles."***
T	New ROW Width (Feet)	Enter width of new ROW. The entry type is unrestricted. Entries such as "60,80,100" or "60 - 100" or "centerline" or "railroad" or "street" are permissible. Make detailed explanations, if needed, elsewhere. ***Please do not write "feet."***
U	New ROW Length (Miles)	Enter new (additional) ROW length, in miles. ***Please do not write "miles."***
V	Rule Section or PUC Control Number	Enter the PUC Substantive Rule 25.101 section(s) which are applicable. For multiple section applicability, please delineate by commas, e.g., "25.101(c)(5)(A),25.101(c)(5)(B)" for a project incorporating a line extension (A) and a voltage upgrade on the existing line which is being extended(B). ***If the project involves a CCN Application, enter ONLY the 5-digit control number. Please do not write "docket," "CCN" or other text, except when needed in citing Rule 25.101.*** Should the project include work done under both CCN and 25.101(c)(5), follow the same practices and delineate with commas.
W	Comments	Enter information not included elsewhere, including reimbursed costs. A cost variance explanation is no longer required for non-CCN projects. However, utilities will be required to submit a Cost Analysis ***only*** for CCN Projects. See Note below.

Cost Analysis

CCN Projects (only): Within 14 days of submission of the final costs, the utility shall provide a costs analysis in the same tabular format, including the same line items, as that submitted with the original or amended CCN application. This cost analysis shall include:

1. The original cost estimate in the CCN application for the preferred route;
2. The cost estimate at the time construction began for the Commission-approved route; and
3. The final cost.

A brief discussion of the reasons for any costs variances exceeding 10% shall be included, if applicable. Staff may request further information as needed.

Locational and Attribute Data

1. Submission as a shapefile

The data shall conform to all of the following guidelines.

All shapefiles shall contain at least four files including, at a minimum:

- .shp – shape format; the feature geometry itself;
- .shx – shape index format; a positional index of the feature geometry to allow seeking forwards and backwards quickly;
- .dbf – attribute format; columnar attributes for each shape in dBase IV format; and
- .prj – projection format; the coordinate system and projection information as a plain text file describing the projection using well-known text format.

Projection: All files shall have projection information embedded in the file. This information is stored in the .prj file mentioned above. The projection file provides mathematical process that transforms feature locations from the earth's curved surface to a map's flat surface. The projected coordinates system employs a projection to transform locations expressed as latitude and longitude values to X,Y coordinates. Without the projection information, the files may not overlay accurately.

Data scale and accuracy: All data shall be provided in a scale of 1:24,000 and shall conform to the accuracy standards described in USGS Fact Sheet FS-171-99 or successor Map Accuracy Standards.

Attributes: Shapefiles shall contain the appropriate attribution to allow the layer to be symbolized according to what the layer is and what it represents. For example, a transmission line shapefile that is supposed to represent the power line voltages shall have the appropriate attributes in the file to see what the voltages are for each feature. If that same shapefile will also represent the owner of the power line, then the attributes for ownership shall also be included in the file. Attributes shall be arranged in the same order as they would be if submitted as a spreadsheet as described below. Each attribute field shall be completely and accurately filled.

2. Submission as a spreadsheet

The workbook containing the two spreadsheets detailing locational coordinate point data and attribute data for the transmission line or substation shall submitted as a native file (xls or xlsx) as described above. A template of the spreadsheets is available on the PUC website, and they should not be altered except to enter the requested data or to add columns or rows as necessary for additional entries.

The locational data workbook shall contain two spreadsheets that shall appear exactly as described below.

Locational Coordinate Point Data for Transmission Lines

Spreadsheet Column	Column Title	Notes
A	Point ID	Provide this data for the two endpoints and each point along the line at which the line changes direction. Name each point with a unique (to this line) identifier. The endpoints should be identified as the names of the substations.
B	Latitude	To 7 true decimal places; no rounding
C	Longitude	To 7 true decimal places; no rounding

Attribute Data for Transmission Lines

Spreadsheet Row	Row Title	Notes
1	Line owner	
2	Existing voltage	
3	Conductor Type & Size & Bundling	For each separate circuit on the line
4	Structure type	i.e., steel lattice, wood pole
5	ROW width	In feet
6	ROW length	In miles
7	Rule section or PUC control number	

Locational Coordinate Point Data for New Substations

Spreadsheet Column	Column Title	Notes
A	Substation ID	Name or number
B	Latitude	To 7 true decimal places; no rounding
C	Longitude	To 7 true decimal places; no rounding

Attribute Data for New Substations

Spreadsheet Row	Row Title	Notes
1	Owner	
2	Substation ID	Name or number
3	Address	Address of substation, if applicable
4	Occupants	Names of entities owning facilities in the substation
5	Voltages	All voltages present in the substation
6	Emergency contact	Name of the person to contact in case of emergency (24/7)
7	Emergency phone	Phone number of the person to contact in case of emergency (24/7)
8	Emergency email	Email address of the person to contact in case of emergency (24/7)

TRD-201300641
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 14, 2013

♦ ♦ ♦

Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 13-9022

FINAL APPROVAL OF RULES FOR DISMISSALS AND EXPEDITED ACTIONS

ORDERED that:

1. In accordance with the Act of May 25, 2011, 82nd Leg., R.S., ch. 203, §§ 1.01, 2.01 (HB 274), amending section 22.004 of the Texas Government Code, Rules 91a and 169 of the Texas Rules of Civil Procedure and Rule 902(10)(c) of the Texas Rules of Evidence are adopted as follows, and Rules 47 and 190 of the Texas Rules of Civil Procedure are amended as follows.

2. By Order dated November 13, 2012, in Misc. Docket No. 12-9191, the Court promulgated Rules of Civil Procedure 91a and 169 and Rule of Evidence 902(10)(c), as well as amendments to Rules of Civil Procedure 47 and 190, and invited public comment. Following public comment, the Court made revisions to the rules. This Order incorporates those revisions and contains the final version of the rules, effective March 1, 2013.

3. Rule of Civil Procedure 91a and Rule of Evidence 902(10)(c) apply to all cases, including those pending on March 1, 2013. Rule of Civil Procedure 169 and the amendments to Rules of Civil Procedure 47 and 190 apply to cases filed on or after March 1, 2013, except for those filed in justice court.

4. This Order also promulgates a revised civil case information sheet required by Rule 78a of the Texas Rules of Civil Procedure, in accordance with the amendments to Rule of Civil Procedure 47. The revised case information sheet applies to cases filed on or after March 1, 2013.

5. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this Order to each elected member of the Legislature; and

d. submit a copy of the Order for publication in the *Texas Register*.

Dated: February 12, 2013

_____

Wallace B. Jefferson, Chief Justice

_____

Nathan L. Hecht, Justice

_____

Paul W. Green, Justice

_____

Phil Johnson, Justice

_____

Don R. Willett, Justice

_____

Eva M. Guzman, Justice

_____

Debra H. Lehrmann, Justice

_____

Jeffrey S. Boyd, Justice

_____

John P. Devine, Justice

DISMISSAL RULE

New Rule 91a, Texas Rules of Civil Procedure:

91a. Dismissal of Baseless Causes of Action

91a.1 Motion and Grounds. Except in a case brought under the Family Code or a case governed by Chapter 14 of the Texas Civil Practice and Remedies Code, a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. A cause of action has no basis in fact if no reasonable person could believe the facts pleaded.

91a.2 Contents of Motion. A motion to dismiss must state that it is made pursuant to this rule, must identify each cause of action to which it is addressed, and must state specifically the reasons the cause of action has no basis in law, no basis in fact, or both.

91a.3 Time for Motion and Ruling. A motion to dismiss must be:

(a) filed within 60 days after the first pleading containing the challenged cause of action is served on the movant;

(b) filed at least 21 days before the motion is heard; and

(c) granted or denied within 45 days after the motion is filed.

91a.4 Time for Response. Any response to the motion must be filed no later than 7 days before the date of the hearing.

91a.5 Effect of Nonsuit or Amendment; Withdrawal of Motion.

(a) The court may not rule on a motion to dismiss if, at least 3 days before the date of the hearing, the respondent files a nonsuit of the challenged cause of action, or the movant files a withdrawal of the motion.

(b) If the respondent amends the challenged cause of action at least 3 days before the date of the hearing, the movant may, before the date of the hearing, file a withdrawal of the motion or an amended motion directed to the amended cause of action.

(c) Except by agreement of the parties, the court must rule on a motion unless it has been withdrawn or the cause of action has been nonsuited in accordance with (a) or (b). In ruling on the motion, the court must not consider a nonsuit or amendment not filed as permitted by paragraphs (a) or (b).

(d) An amended motion filed in accordance with (b) restarts the time periods in this rule.

91a.6 Hearing; No Evidence Considered. Each party is entitled to at least 14 days' notice of the hearing on the motion to dismiss. The court may, but is not required to, conduct an oral hearing on the motion. Except as required by 91a.7, the court may not consider evidence in ruling on the motion and must decide the motion based solely on the

pleading of the cause of action, together with any pleading exhibits permitted by Rule 59.

91a.7 Award of Costs and Attorney Fees Required. Except in an action by or against a governmental entity or a public official acting in his or her official capacity or under color of law, the court must award the prevailing party on the motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court. The court must consider evidence regarding costs and fees in determining the award.

91a.8 Effect on Venue and Personal Jurisdiction. This rule is not an exception to the pleading requirements of Rules 86 and 120a, but a party does not, by filing a motion to dismiss pursuant to this rule or obtaining a ruling on it, waive a special appearance or a motion to transfer venue. By filing a motion to dismiss, a party submits to the court's jurisdiction only in proceedings on the motion and is bound by the court's ruling, including an award of attorney fees and costs against the party.

91a.9 Dismissal Procedure Cumulative. This rule is in addition to, and does not supersede or affect, other procedures that authorize dismissal.

Comment to 2013 change: Rule 91a is a new rule implementing section 22.004(g) of the Texas Government Code, which was added in 2011 and calls for rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence. A motion to dismiss filed under this rule must be ruled on by the court within 45 days unless the motion, pleading, or cause of action is withdrawn, amended, or nonsuited as specified in 91a.5. If an amended motion is filed in response to an amended cause of action in accordance with 91a.5(b), the court must rule on the motion within 45 days of the filing of the amended motion and the respondent must be given an opportunity to respond to the amended motion. The term "hearing" in the rule includes both submission and an oral hearing. Attorney fees awarded under 91a.7 are limited to those associated with challenged cause of action, including fees for preparing or responding to the motion to dismiss.

RULES FOR EXPEDITED ACTIONS

Amendments to Rule 47, Texas Rules of Civil Procedure:

Rule 47. Claims for Relief

An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain:

(a) a short statement of the cause of action sufficient to give fair notice of the claim involved~~,~~;

(b) ~~in all claims for unliquidated damages only the~~ a statement that the damages sought are within the jurisdictional limits of the court~~,~~;

(c) except in suits governed by the Family Code, a statement that the party seeks:

(1) only monetary relief of $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees; or

(2) monetary relief of $100,000 or less and non-monetary relief; or

(3) monetary relief over $100,000 but not more than $200,000; or

(4) monetary relief over $200,000 but not more than $1,000,000; or

(5) monetary relief over $1,000,000; and

(ed) a demand for judgment for all the other relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed. A party that fails to comply with (c) may not conduct discovery until the party's pleading is amended to comply.

Comment to 2013 change: Rule 47 is amended to require a more specific statement of the relief sought by a party. The amendment requires parties to plead into or out of the expedited actions process governed by Rule 169, added to implement section 22.004(h) of the Texas Government Code. Except in a in a suit governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code, a suit in which the original petition contains the statement in paragraph (c)(1) is governed by the expedited actions process. The further specificity in paragraphs (c)(2)-(5) is to provide information regarding the nature of cases filed and does not affect a party's substantive rights.

New Rule 169, Texas Rules of Civil Procedure:

Rule 169. Expedited Actions

(a) *Application.*

(1) The expedited actions process in this rule applies to a suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

(2) The expedited actions process does not apply to a suit in which a party has filed a claim governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.

(b) *Recovery.* In no event may a party who prosecutes a suit under this rule recover a judgment in excess of $100,000, excluding post-judgment interest.

(c) *Removal from Process.*

(1) A court must remove a suit from the expedited actions process:

(A) on motion and a showing of good cause by any party; or

(B) if any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by (a)(l).

(2) A pleading, amended pleading, or supplemental pleading that removes a suit from the expedited actions process may not be filed without leave of court unless it is filed before the earlier of 30 days after the discovery period is closed or 30 days before the date set for trial. Leave to amend may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.

(3) If a suit is removed from the expedited actions process, the court must reopen discovery under Rule 190.2(c).

(d) *Expedited Actions Process.*

(1) Discovery. Discovery is governed by Rule 190.2.

(2) Trial Setting; Continuances. On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(1) ends. The court may continue the case twice, not to exceed a total of 60 days.

(3) Time Limits for Trial. Each side is allowed no more than eight hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments. On motion and a showing of good cause by any party, the court may extend the time limit to no more than twelve hours per side.

(A) The term "side" has the same definition set out in Rule 233.

(B) Time spent on objections, bench conferences, bills of exception, and challenges for cause to a juror under Rule 228 are not included in the time limit.

(4) Alternative Dispute Resolution.

(A) Unless the parties have agreed not to engage in alternative dispute resolution, the court may refer the case to an alternative dispute resolution procedure once, and the procedure must:

(i) not exceed a half-day in duration, excluding scheduling time;

(ii) not exceed a total cost of twice the amount of applicable civil filing fees; and

(iii) be completed no later than 60 days before the initial trial setting.

(B) The court must consider objections to the referral unless prohibited by statute.

(C) The parties may agree to engage in alternative dispute resolution other than that provided for in (A).

(5) Expert Testimony. Unless requested by the party sponsoring the expert, a party may only challenge the admissibility of expert testimony as an objection to summary judgment evidence under Rule 166a or during the trial on the merits. This paragraph does not apply to a motion to strike for late designation.

Comments to 2013 change:

1. Rule 169 is a new rule implementing section 22.004(h) of the Texas Government Code, which was added in 2011 and calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed $100,000.

2. The expedited actions process created by Rule 169 is mandatory; any suit that falls within the definition of 169(a)(1) is subject to the provisions of the rule.

3. In determining whether there is good cause to remove the case from the process or extend the time limit for trial, the court should consider factors such as whether the damages sought by multiple claimants against the same defendant exceed in the aggregate the relief allowed under 169(a)(1), whether a defendant has filed a compulsory counterclaim in good faith that seeks relief other than that allowed under 169(a)(1), the number of parties and witnesses, the complexity of the legal and factual issues, and whether an interpreter is necessary.

4. Rule 169(b) specifies that a party who prosecutes a suit under this rule cannot recover a judgment in excess of $100,000. Thus, the rule in *Greenhalgh v. Service Lloyds Ins. Co.,* 787 S.W.2d 938 (Tex. 1990), does not apply if a jury awards damages in excess of $100,000 to the party. The limitation in 169(b) does not apply to a counter-claimant that seeks relief other than that allowed under 169(a)(1).

5. The discovery limitations for expedited actions are set out in Rule 190.2, which is also amended to implement section 22.004(h) of the Texas Government Code.

Amendments to Rule 190, Texas Rules of Civil Procedure:

Rule 190. Discovery Limitations

. . .

190.2. Discovery Control Plan - ~~Suits Involving $50,000 or Less~~ Expedited Actions and Divorces Involving $50,000 or Less (Level 1)

(a) *Application.* This subdivision applies to:

(1) ~~any suit in which all plaintiffs affirmatively plead that they seek only monetary relief aggregating $50,000 or less, excluding costs, prejudgment interest and attorneys' fees~~ any suit that is governed by the expedited actions process in Rule 169; and

(2) unless the parties agree that Rule 190.3 should apply or the court orders a discovery control plan under Rule 190.4, any suit for divorce not involving children in which a party pleads that the value of the marital estate is more than zero but not more than $50,000.

~~(b) Exceptions. This subdivision does not apply if:~~

~~(1) the parties agree that Rule 190.3 should apply;~~

~~(2) the court orders a discovery control plan under Rule 190.4; or~~

~~(3) any party files a pleading or an amended or supplemental pleading that seeks relief other than that to which this subdivision applies.~~

~~A pleading, amended pleading (including trial amendment), or supplemental pleading that renders this subdivision no longer applicable may not be filed without leave of court less than 45 days before the date set for trial. Leave may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.~~

(e~~b~~) *Limitations.* Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:

(1) Discovery Period. All discovery must be conducted during the discovery period, which begins when the suit is filed and continues until ~~30 days before the date set for trial~~ 180 days after the date the first request for discovery of any kind is served on a party.

(2) Total Time for Oral Depositions. Each party may have no more than six hours in total to examine and cross-examine all witnesses in oral depositions. The parties may agree to expand this limit up to ten hours in total, but not more except by court order. The court may modify the deposition hours so that no party is given unfair advantage.

(3) Interrogatories. Any party may serve on any other party no more than ~~25~~ 15 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

(4) Requests for Production. Any party may serve on any other party no more than 15 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.

(5) Requests for Admissions. Any party may serve on any other party no more than 15 written requests for admissions. Each discrete subpart of a request for admission is considered a separate request for admission.

(6) Requests for Disclosure. In addition to the content subject to disclosure under Rule 194.2, a party may request disclosure of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses. A request for disclosure made pursuant to this paragraph is not considered a request for production.

(d~~c~~) Reopening Discovery. ~~When the filing of a pleading or an amended or supplemental pleading renders this subdivision no longer applicable,~~ If a suit is removed from the expedited actions process in Rule 169 or, in a divorce, the filing of a pleading renders this subdivision no longer applicable, the discovery period reopens, and discovery must be completed within the limitations provided in Rules 190.3 or 190.4, whichever is applicable. Any person previously deposed may be redeposed. On motion of any party, the court should continue the trial date if necessary to permit completion of discovery.

. . .

190.5. Modification of Discovery Control Plan

The court may modify a discovery control plan at any time and must do so when the interest of justice requires. Unless a suit is governed by the expedited actions process in Rule 169, t~~T~~he court must allow additional discovery:

(a) related to new, amended or supplemental pleadings, or new information disclosed in a discovery response or in an amended or supplemental response, if:

(1) the pleadings or responses were made after the deadline for completion of discovery or so nearly before that deadline that an adverse party does not have an adequate opportunity to conduct discovery related to the new matters, and

(2) the adverse party would be unfairly prejudiced without such additional discovery;

(b) regarding matters that have changed materially after the discovery cutoff if trial is set or postponed so that the trial date is more than three months after the discovery period ends.

Comment to 2013 change: Rule 190 is amended to implement section 22.004(h) of the Texas Government Code, which calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed $100,000. Rule 190.2 now applies to expedited actions, as defined by Rule 169. Rule 190.2 continues to apply to divorces not involving children in which the value of the marital estate is not more than $50,000, which are otherwise exempt from the expedited actions process. Amended Rule 190.2(b) ends the discovery period 180 days after the date the first discovery request is served; imposes a fifteen limit maximum on interrogatories, requests for production, and requests for admission; and allows for additional disclosures. Although expedited actions are not subject to mandatory additional discovery under amended Rule 190.5, the court may still allow additional discovery if the conditions of Rule 190.5(a) are met.

New Rule 902(10)(c), Texas Rules of Evidence:

Rule 902. Self-Authentication

. . .

(10) Business Records Accompanied by Affidavit.

. . .

(c) *Medical expenses affidavit.* A party may make prima facie proof of medical expenses by affidavit that substantially complies with the following form:

Affidavit of Records Custodian of

_____

STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

My name is _____. I am of sound mind and capable of making this affidavit, and personally acquainted with the facts herein stated.

I am a custodian of records for _____. Attached to this affidavit are records that provide an itemized statement of the service and the charge for the service that _____ provided to _____ on _____. The attached records are a part of this affidavit.

The attached records are kept by _____ in the regular course of business, and it was the regular course of business of _____ for an employee or representative of _____, with knowledge of the service provided, to make the record or to transmit information to be included in the record. The records were made in the regular course of business at or near the time or reasonably soon after the time the service was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services was reasonable at the time and place that the services were provided.

The total amount paid for the services was $_____ and the amount currently unpaid but which _____ has a right to be paid after any adjustments or credits is $_____.

_____
Affiant

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, _____.

_____
Notary Public, State of Texas

Notary's printed name: _____ My commission expires: _____

Comment to 2013 Change: Rule 902(10)(c) is added to provide a form affidavit for proof of medical expenses. The affidavit is intended to comport with Section 41.0105 of the Civil Practice and Remedies Code, which allows evidence of only those medical expenses that have been paid or will be paid, after any required credits or adjustments. *See Haygood v. Escabedo,* 356 S.W.3d 390 (Tex. 2011).

CIVIL CASE INFORMATION SHEET (REV. 2/13)

CAUSE NUMBER *(FOR CLERK USE ONLY)*: _____ COURT *(FOR CLERK USE ONLY)*: _____

STYLED _____
(e.g. John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		**Names of parties in case:**	**Person or entity completing sheet is:**
Name:	Email:	Plaintiff(s)/Petitioner(s):	☐ Attorney for Plaintiff/Petitioner ☐ *Pro Se* Plaintiff/Petitioner ☐ Title IV-D Agency ☐ Other: _____
Address:	Telephone:		Additional Parties in Child Support Case:
City/State/Zip:	Fax:	Defendant(s)/Respondent(s):	Custodial Parent:
Signature:	State Bar No:		Non-Custodial Parent:
		[Attach additional page as necessary to list all parties]	Presumed Father:

2. Indicate case type, or identify the most important issue in the case *(select only 1)*:

Civil			*Family Law*	
Contract	**Injury or Damage**	**Real Property**	**Marriage Relationship**	**Post-judgment Actions (non-Title IV-D)**
Debt/Contract ☐ Consumer/DTPA ☐ Debt/Contract ☐ Fraud/Misrepresentation ☐ Other Debt/Contract: _____ *Foreclosure* ☐ Home Equity – Expedited ☐ Other Foreclosure ☐ Franchise ☐ Insurance ☐ Landlord/Tenant ☐ Non-Competition ☐ Partnership ☐ Other Contract: _____	☐ Assault/Battery ☐ Construction ☐ Defamation *Malpractice* ☐ Accounting ☐ Legal ☐ Medical ☐ Other Professional Liability: _____ ☐ Motor Vehicle Accident ☐ Premises *Product Liability* ☐ Asbestos/Silica ☐ Other Product Liability List Product: _____ ☐ Other Injury or Damage: _____	☐ Eminent Domain/ Condemnation ☐ Partition ☐ Quiet Title ☐ Trespass to Try Title ☐ Other Property: _____ **Related to Criminal Matters** ☐ Expunction ☐ Judgment Nisi ☐ Non-Disclosure ☐ Seizure/Forfeiture ☐ Writ of Habeas Corpus—Pre-indictment ☐ Other: _____	☐ Annulment ☐ Declare Marriage Void *Divorce* ☐ With Children ☐ No Children **Other Family Law** ☐ Enforce Foreign Judgment ☐ Habeas Corpus ☐ Name Change ☐ Protective Order ☐ Removal of Disabilities of Minority ☐ Other: _____	☐ Enforcement ☐ Modification – Custody ☐ Modification – Other **Title IV-D** ☐ Enforcement/Modification ☐ Paternity ☐ Reciprocals (UIFSA) ☐ Support Order **Parent-Child Relationship** ☐ Adoption/Adoption with Termination ☐ Child Protection ☐ Child Support ☐ Custody or Visitation ☐ Gestational Parenting ☐ Grandparent Access ☐ Parentage/Paternity ☐ Termination of Parental Rights ☐ Other Parent-Child: _____
Employment	**Other Civil**			
☐ Discrimination ☐ Retaliation ☐ Termination ☐ Workers' Compensation ☐ Other Employment: _____	☐ Administrative Appeal ☐ Antitrust/Unfair Competition ☐ Code Violations ☐ Foreign Judgment ☐ Intellectual Property ☐ Lawyer Discipline ☐ Perpetuate Testimony ☐ Securities/Stock ☐ Tortious Interference ☐ Other: _____			
Tax	***Probate & Mental Health***			
☐ Tax Appraisal ☐ Tax Delinquency ☐ Other Tax	*Probate/Wills/Intestate Administration* ☐ Dependent Administration ☐ Independent Administration ☐ Other Estate Proceedings ☐ Guardianship—Adult ☐ Guardianship—Minor ☐ Mental Health ☐ Other: _____			

3. Indicate procedure or remedy, if applicable *(may select more than 1)*:

☐ Appeal from Municipal or Justice Court ☐ Arbitration-related ☐ Attachment ☐ Bill of Review ☐ Certiorari ☐ Class Action	☐ Declaratory Judgment ☐ Garnishment ☐ Interpleader ☐ License ☐ Mandamus ☐ Post-judgment	☐ Prejudgment Remedy ☐ Protective Order ☐ Receiver ☐ Sequestration ☐ Temporary Restraining Order/Injunction ☐ Turnover

4. Indicate damages sought (*do not select if it is a family law case*):

☐ Less than $100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees
☐ Less than $100,000 and non-monetary relief
☐ Over $100,000 but not more than $200,000
☐ Over $200,000 but not more than $1,000,000
☐ Over $1,000,000

TRD-201300615
Marisa Secco
Rules Attorney
Supreme Court of Texas
Filed: February 13, 2013

♦ ♦ ♦

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 13-9023

ADOPTION OF RULES FOR JUSTICE COURT CASES

ORDERED that:

1. In accordance with the Act of June 29, 2011, 82nd Leg., 1st C.S., ch. 3, §§ 5.02, 5.07 (HB 79), amending section 27.060 of the Texas Government Code and abolishing the small claims court as of May 1, 2013, Rules 500-510 of the Texas Rules of Civil Procedure are adopted as follows, and Rules 523-591 and 737-755 of the Texas Rules of Civil Procedure and section 92.0563(d) of the Texas Property Code are repealed, effective May 1, 2013.

2. Rules of Civil Procedure 500-510 govern cases filed on or after May 1, 2013, and cases pending on May 1, 2013, except to the extent that in the opinion of the court their application in a case pending on May 1, 2013, would not be feasible or would work injustice, in which event the formerly applicable procedure applies. An action taken before May 1, 2013, in a case pending on May 1, 2013, that was done pursuant to any previously applicable procedure must be treated as valid. Where citation or other process was issued or served prior to May 1, 2013, in compliance with any previously applicable procedure, the party served has the time provided for under the previously applicable procedure to answer or otherwise respond.

3. This Order also promulgates a justice court civil case information sheet, as required by new Rule 502 of the Texas Rules of Civil Procedure. The case information sheet takes effect May 1, 2013.

4. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this Order to each elected member of the Legislature; and

d. submit a copy of the Order for publication in the *Texas Register.*

5. These amendments may be changed in response to comments received on or before April 1, 2013. Any interested party may submit written comments directed to Marisa Secco, Rules Attorney, at P.O. Box 12248, Austin, TX 78711, or rulescomments@txcourts.gov.

Dated: February 12, 2013.

_____

Wallace B. Jefferson, Chief Justice

_____

Nathan L. Hecht, Justice

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Paul W. Green, Justice

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Phil Johnson, Justice

_____

Don R. Willett, Justice

_____

Eva M. Guzman, Justice

_____

Debra H. Lehrmann, Justice

_____

Jeffrey S. Boyd, Justice

_____

John P. Devine, Justice

PER CURIAM

In 2011, the 82nd Texas Legislature passed House Bill 79[1] (HB 79), a major court reorganization bill. HB 79 abolishes the small claims court effective May 1, 2013, and calls for the Supreme Court to promulgate three subsets of rules for cases filed in justice court by that date: (1) rules to define which justice court cases constitute small claims cases; (2) rules of civil procedure applicable to small claims cases; and (3) rules for eviction proceedings. The bill also requires the Court to write specific procedural rules for debt collection cases. The Legislature directed that the rules ensure the fair, expeditious, and inexpensive resolution of small claims cases. This Order promulgates rules for justice court cases that comply with that directive.

On September 7, 2011, the Court appointed the Task Force for Rules in Small Claims Cases and Justice Court Proceedings to propose rules to the Court pursuant to HB 79.[2] The Task Force was chaired by Hon. Russell Casey, a Tarrant County justice of the peace. The remaining membership of the Task Force-Hon. Ralph Swearingin Jr., Ted Wood, Hon. Russell C. Ridgway, Hon. Judy Schier Hobbs, Hon. Albert Bernard Cercone, Bronson Tucker, Janet Marton, Marty B. Leewright, Hon. Ronnie Jordan, Hon. Jo Ann Delgado, Hon. Gordon Starkenburg, Hon. Greg Magee, Hon. David Cobos, and Nelson Mock-included justices of the peace from across the state, in accordance with the Legislature's directive, as well as practitioners and persons involved with the administration of the justice courts. The Task Force met several times and focused on drafting rules that conformed with HB 79, which required the new rules to maintain certain aspects of the small claims court, such as the informality of the proceedings and the ability of the judge to develop the case. In drafting its proposal, the Task Force also took into account the input of outside interest groups, including the Texas Creditor's Bar Association and Texas Rio Grande Legal Aid.

The Task Force completed its work and sent a report, proposing new rules for civil cases in justice court, to the Court on March 30, 2012. The Court referred study of the rules to the Supreme Court Advisory Committee, which devoted four meetings, on June 22-23, 2012 and September 28-29, 2012, to the review of the Task Force report. The meetings were also used as a public forum-time was allowed for members of the public and representatives of interested organizations to speak to the Committee about the Task Force's proposed rules.

Following the September Committee meetings, the Court undertook its own review of the rules, carefully reviewing each Committee transcript, the written comments submitted to the Committee and to the Court, and the applicable case law and statutes. The Court revised and reorganized the rules proposed by the Task Force-incorporating the comments of the Committee and other stakeholders while maintaining the Task Force's vision to create a self-contained and accessible set of rules for justice court cases.

The final proposed rules provide a coherent and organized framework for civil cases filed in justice court. The Court now again invites pub-

lic comment on the proposed rules, in the hope that any constructive feedback received will result in an improved final product.

[1] Act of June 29, 2011, 82nd Leg., 1st C.S., ch. 3, §§ 5.02, 5.07.

[2] Misc. Docket No. 11-9180.

TEXAS RULES OF CIVIL PROCEDURE

PART V. RULES OF PRACTICE IN JUSTICE COURTS

RULE 500. GENERAL RULES

RULE 500.1. CONSTRUCTION OF RULES

Unless otherwise expressly provided, in Part V of these Rules of Civil Procedure:

(a) the past, present, and future tense each includes the other;

(b) the term "it" includes a person of either gender or an entity; and

(c) the singular and plural each includes the other.

RULE 500.2. DEFINITIONS

In Part V of these Rules of Civil Procedure:

(a) "Answer" is the written response that someone who is sued must file with the court after being served with a citation.

(b) "Citation" is the court-prepared document required to be served upon a party to inform the party that it has been sued.

(c) "Claim" is the legal theory and alleged facts that, if proven, entitle a party to relief against another party in court.

(d) "Clerk" is a person designated by the judge as a justice court clerk, or the judge if there is no clerk available.

(e) "Counterclaim" is a claim brought by a party who has been sued against the party who filed suit, for example, a defendant suing a plaintiff.

(f) "County court" is the county court, statutory county court, or district court in a particular county with jurisdiction over appeals of civil cases from justice court.

(g) "Cross-claim" is a claim brought by one party against another party on the same side of a lawsuit. For example, if a plaintiff sues two defendants, A and B, A can seek relief against B by means of a cross-claim.

(h) "Default judgment" is a judgment awarded to a plaintiff when the defendant fails to answer and dispute the plaintiff's claims in the lawsuit.

(i) "Defendant" is someone who is sued, including a plaintiff against whom a counterclaim is filed.

(j) "Defense" is an assertion by a defendant that the plaintiff is not entitled to relief from the court.

(k) "Discovery" is the process through which parties obtain information from each other in order to prepare for trial or enforce a judgment. The term does not refer to any information that a party is entitled to under applicable law.

(l) "Dismissed without prejudice" means a case has been dismissed but has not been finally decided and may be refiled.

(m) "Dismissed with prejudice" means a case has been dismissed and finally decided and may not be refiled.

(n) "Judge" is a justice of the peace.

(o) "Judgment" is a final order by the court that states the relief, if any, a party is entitled to or must provide.

(p) "Jurisdiction" is the authority of the court to hear and decide a case.

(q) "Motion" is a request that the court make a specified ruling or order.

(r) "Notice" is a document prepared and delivered by the court or a party stating that something is required of the party receiving the notice.

(s) "Party" is a person involved in the case that is either suing or being sued, including all plaintiffs, defendants, and third parties that have been joined in the case.

(t) "Petition" is a formal written application stating a party's claims and requesting relief from the court. It is the first document filed with the court to begin a lawsuit.

(u) "Plaintiff" is someone who sues, including a defendant who files a counterclaim.

(v) "Pleading" is a written document filed by a party, including a petition and an answer, that states a claim or defense and outlines the relief sought.

(w) "Relief" is the remedy a party requests from the court, such as the recovery of money or the return of property.

(x) "Serve" and "service" are delivery of citation as required by Rule 501.2, or of a document as required by Rule 501.4.

(y) "Sworn" means signed in front of someone authorized to take oaths, such as a notary, or signed under penalty of perjury. Filing a false sworn document can result in criminal prosecution.

(z) "Third party claim" is a claim brought by a party being sued against someone who is not yet a party to the case.

RULE 500.3. APPLICATION OF RULES IN JUSTICE COURT CASES

(a) *Small Claims Case.* A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, or personal property. The claim can be for no more than $10,000 excluding statutory interest and court costs but including attorney fees, if any. Small claims cases are governed by Rules 500-507 of Part V of the Rules of Civil Procedure.

(b) *Debt Claim Case.* A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than $10,000 in damages, excluding statutory interest and court costs but including attorney fees, if any. Debt claim cases in justice court are governed by Rules 500-507 and 508 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 508 and the rest of Part V, Rule 508 applies.

(c) *Repair and Remedy Case.* A repair and remedy case is a lawsuit brought to seek judicial remedy for the alleged failure of a landlord to remedy or repair a condition as required by Chapter 92 of the Texas Property Code. The relief sought can be for no more than $10,000, excluding statutory interest and court costs but including attorney fees, if any. Repair and remedy cases are governed by Rules 500-507 and 509 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 509 and the rest of Part V, Rule 509 applies.

(d) *Eviction Case.* An eviction case is a lawsuit brought to recover possession of real property under Chapter 24 of the Texas Property Code, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than $10,000, including costs and attorney fees, if any. Eviction cases are governed by Rules 500-507 and 510 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 510 and the rest of Part V, Rule 510 applies.

(e) *Application of Other Rules.* The other Rules of Civil Procedure and the Rules of Evidence do not apply except:

(1) when the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties; or

(2) when otherwise specifically provided by law or these rules.

(f) *Examination of Rules.* The court must make the Rules of Civil Procedure and the Rules of Evidence available for examination, either in paper form or electronically, during the court's business hours.

RULE 500.4. REPRESENTATION IN JUSTICE COURT CASES

(a) *Representation of an Individual.* An individual may:

(1) represent himself or herself;

(2) be represented by someone who is not an attorney and is not being compensated for the representation; or

(3) be represented by an attorney.

(b) *Representation of a Corporation or Other Entity.* A corporation or other entity may:

(1) be represented by an employee, owner, member, officer, or partner of the entity who is not an attorney;

(2) be represented by a property manager in an eviction case; or

(3) be represented by an attorney.

RULE 500.5. COMPUTATION OF TIME; TIMELY FILING

(a) *Computation of Time.* To compute a time period in these rules:

(1) exclude the day of the event that triggers the period;

(2) count every day, including Saturdays, Sundays, and legal holidays; and

(3) include the last day of the period, but

(A) if the last day is a Saturday, Sunday, or legal holiday, the time period is extended to the next day that is not a Saturday, Sunday, or legal holiday; or

(B) if the last day for filing falls on a day during which the court is closed before 5:00 p.m., the time period is extended to the court's next business day.

(b) *Timely Filing by Mail.* Any document required to be filed by a given date is considered timely filed if deposited in the U.S. mail on or before that date, and received within 10 days of the due date. A legible postmark affixed by the United States Postal Service is evidence of the date of mailing.

(c) *Extensions.* The judge may, for good cause shown, extend any time period under these rules except those relating to new trial and appeal.

RULE 500.6. JUDGE TO DEVELOP THE CASE

In order to develop the facts of the case, a judge may question a witness or party and may summon any person or party to appear as a witness when the judge considers it necessary to ensure a correct judgment and a speedy disposition.

RULE 500.7. EXCLUSION OF WITNESSES

The court must, on a party's request, or may, on its own initiative, order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize the exclusion of:

(a) a party who is a natural person or the spouse of such natural person;

(b) an officer or employee designated as a representative of a party who is not a natural person; or

(c) a person whose presence is shown by a party to be essential to the presentation of the party's case.

RULE 500.8. SUBPOENAS

(a) *Use.* A subpoena may be used by a party or the judge to command a person or entity to attend and give testimony at a hearing or trial. A person may not be required by subpoena to appear in a county that is more than 150 miles from where the person resides or is served.

(b) *Who Can Issue.* A subpoena may be issued by the clerk of the justice court or an attorney authorized to practice in the State of Texas, as an officer of the court.

(c) *Form.* Every subpoena must be issued in the name of the "State of Texas" and must:

(1) state the style of the suit and its case number;

(2) state the court in which the suit is pending;

(3) state the date on which the subpoena is issued;

(4) identify the person to whom the subpoena is directed;

(5) state the date, time, place, and nature of the action required by the person to whom the subpoena is directed;

(6) identify the party at whose instance the subpoena is issued, and the party's attorney of record, if any;

(7) state that "Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of court from which the subpoena is issued and may be punished by fine or confinement, or both"; and

(8) be signed by the person issuing the subpoena.

(d) *Service: Where, By Whom, How.* A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or by any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the witness's attorney of record.

(e) *Compliance Required.* A person commanded by subpoena to appear and give testimony must remain at the hearing or trial from day to day until discharged by the court or by the party summoning the witness. If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(f) *Objection.* A person commanded to attend and give testimony at a hearing or trial may object or move for a protective order before the court at or before the time and place specified for compliance. A party causing a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on objections or motions for protection, the court must provide a person served with a subpoena an adequate time for compliance and protection from undue burden or expense. The court may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

(g) *Enforcement.* Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or of a district court in

the county in which the subpoena is served, and may be punished by fine or confinement, or both. A fine may not be imposed, nor a person served with a subpoena attached, for failure to comply with a subpoena without proof by affidavit of the party requesting the subpoena or the party's attorney of record that all fees due the witness by law were paid or tendered. Proof of service must be made by filing either:

(1) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

(2) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

RULE 500.9. DISCOVERY

(a) *Pretrial Discovery.* Pretrial discovery is limited to that which the judge considers reasonable and necessary. Any requests for pretrial discovery must be presented to the court for approval by written motion. The motion must be served on the responding party. The discovery request must not be served on the responding party unless the judge issues a signed order approving the request after notice to the responding party and a hearing. Failure to comply with a discovery order can result in sanctions, including dismissal of the case or an order to pay the other party's discovery expenses.

(b) *Post-judgment Discovery.* Post-judgment discovery is not required to be filed with the court. The party requesting discovery must give the responding party at least 30 days to respond to a post-judgment discovery request. The responding party may file a written objection with the court within 30 days of receiving the request. If an objection is filed, the judge must hold a hearing to determine if the request is valid. If the objection is denied, the judge must order the party to respond to the request. If the objection is upheld, the judge may reform the request or dismiss it entirely.

RULE 501. CITATION AND SERVICE

RULE 501.1. CITATION

(a) *Issuance.* When a petition is filed with a justice court to initiate a suit, the clerk must promptly issue a citation and deliver the citation as directed by the plaintiff. The plaintiff is responsible for obtaining service on the defendant of the citation and a copy of the petition with any documents filed with the petition. Upon request, separate or additional citations must be issued by the clerk. The clerk must retain a copy of the citation in the court's file.

(b) *Form.* The citation must:

(1) be styled "The State of Texas";

(2) be signed by the clerk under seal of court or by the judge;

(3) contain the name, location, and address of the court;

(4) show the date of filing of the petition;

(5) show the date of issuance of the citation;

(6) show the file number and names of parties;

(7) state the plaintiff's cause of action and relief sought;

(8) be directed to the defendant;

(9) show the name and address of attorney for plaintiff, or if the plaintiff does not have an attorney, the address of plaintiff;

(10) state the date by which the defendant is required to file a written answer with the court issuing citation; and

(11) notify defendant that if the defendant fails to file an answer, judgment by default may be rendered for the relief demanded in the petition.

(c) *Notice.* The citation must include the following notice to the defendant in boldface type: "You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday, or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

(d) *Copies.* The plaintiff must provide enough copies to be served on each defendant. If the party fails to do so, the clerk may make copies and charge the plaintiff the allowable copying cost.

RULE 501.2. SERVICE OF CITATION

(a) *Who May Serve.* No person who is a party to or interested in the outcome of the suit may serve citation in that suit, and, unless otherwise authorized by written court order, a citation in an eviction proceeding and writs and notices of attachment, execution, garnishment, sequestration, possession, re-entry and restoration of utility service, and turnover must be served by a sheriff or constable. Other citations may be served by:

(1) a sheriff or constable;

(2) a process server certified under order of the Supreme Court;

(3) the clerk of the court, if the citation is served by registered or certified mail; or

(4) a person authorized by court order who is 18 years of age or older.

(b) *Method of Service.* Citation must be served by:

(1) delivering a copy of the citation with a copy of the petition attached to the defendant in person, after endorsing the date of delivery on the citation; or

(2) mailing a copy of the citation with a copy of the petition attached to the defendant by registered or certified mail, restricted delivery, with return receipt or electronic return receipt requested.

(c) *Service Fees.* A plaintiff must pay all fees for service unless the plaintiff has filed a sworn statement of inability to pay the fees with the court. If the plaintiff has filed a sworn statement of inability to pay, the plaintiff must arrange for the citation to be served by a sheriff, constable, or court clerk.

(d) *Service on Sunday.* A citation cannot be served on a Sunday except in attachment, garnishment, sequestration, or distress proceedings.

(e) *Alternative Service of Citation.* If the methods under (b) are insufficient to serve the defendant, the plaintiff, or the constable, sheriff, process server certified under order of the Supreme Court, or other person authorized to serve process, may make a request for alternative service. This request must include a sworn statement describing the methods attempted under (b) and stating the defendant's usual place of business or residence, or other place where the defendant can probably be found. The court may authorize the following types of alternative service:

(1) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also leaving a copy of the citation with petition attached at the defendant's residence or other place where the defendant can probably be found with any person found there who is at least 16 years of age; or

(2) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also serving by any other method that the court finds is reasonably likely to provide the defendant with notice of the suit.

(f) *Service by Publication.* In the event that service of citation by publication is necessary, the process is governed by the rules in county and district court.

RULE 501.3. DUTIES OF OFFICER OR PERSON RECEIVING CITATION

(a) *Endorsement; Execution; Return.* The officer or authorized person to whom process is delivered must:

(1) endorse on the process the date and hour on which he or she received it;

(2) execute and return the same without delay; and

(3) complete a return of service, which may, but need not, be endorsed on or attached to the citation.

(b) *Contents of Return.* The return, together with any document to which it is attached, must include the following information:

(1) the case number and case name;

(2) the court in which the case is filed;

(3) a description of what was served;

(4) the date and time the process was received for service;

(5) the person or entity served;

(6) the address served;

(7) the date of service or attempted service;

(8) the manner of delivery of service or attempted service;

(9) the name of the person who served or attempted service;

(10) if the person named in (9) is a process server certified under Supreme Court Order, his or her identification number and the expiration date of his or her certification; and

(11) any other information required by rule or law.

(c) *Citation by Mail.* When the citation is served by registered or certified mail as authorized by Rule 501.2(b)(2), the return by the officer or authorized person must also contain the receipt with the addressee's signature.

(d) *Failure to Serve.* When the officer or authorized person has not served the citation, the return must show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if ascertainable.

(e) *Signature.* The officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable, or clerk of the court, the return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is (First) (Middle) (Last), my date of birth is (Month) (Day), (Year), and my address is (Street), (City), (State) (Zip Code), (County). I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the __ day of (Month), (Year).

_____

Declarant"

(f) *Alternative Service.* Where citation is executed by an alternative method as authorized by 501.2(e), proof of service must be made in the manner ordered by the court.

(g) *Filing Return.* The return and any document to which it is attached must be filed with the court and may be filed electronically or by fax, if those methods of filing are available.

(h) *Prerequisite for Default Judgment.* No default judgment may be granted in any case until proof of service as provided by this rule, or as ordered by the court in the event citation is executed by an alternative method under 501.2(e), has been on file with the clerk of the court 3 days, exclusive of the day of filing and the day of judgment.

RULE 501.4. SERVICE OF PAPERS OTHER THAN CITATION

(a) *Method of Service.* Other than a citation or oral motions made during trial or when all parties are present, every notice required by these rules, and every pleading, plea, motion, application to the court for an order, or other form of request, must be served on all other parties in one of the following ways.

(1) In person. A copy may be delivered to the party to be served, or the party's duly authorized agent or attorney of record, in person or by agent.

(2) Mail or courier. A copy may be sent by courier-receipted delivery or by certified or registered mail, to the party's last known address. Service by certified or registered mail is complete when the document is properly addressed and deposited in the United States mail, postage prepaid.

(3) Fax. A copy may be faxed to the recipient's current fax number. Service by fax after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day.

(4) Email. A copy may be sent to an email address expressly provided by the receiving party, if the party has consented to email service in writing. Service by email after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day.

(5) Other. A copy may be delivered in any other manner directed by the court.

(b) *Timing.* If a document is served by mail, 3 days will be added to the length of time a party has to respond to the document. Notice of any hearing requested by a party must be served on all other parties not less than 3 days before the time specified for the hearing.

(c) *Who May Serve.* Documents other than a citation may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify.

(d) *Certificate of Service.* The party or the party's attorney of record must include in writing on all documents filed a signed statement describing the manner in which the document was served on the other party or parties and the date of service. A certificate by a party or the party's attorney of record, or the return of the officer, or the sworn statement of any other person showing service of a notice is proof of service.

(e) *Failure to Serve.* A party may offer evidence or testimony that a notice or document was not received, or, if service was by mail, that it was not received within 3 days from the date of mailing, and upon so finding, the court may extend the time for taking the action required of the party or grant other relief as it deems just.

RULE 502. INSTITUTION OF SUIT

RULE 502.1. PLEADINGS AND MOTIONS MUST BE WRITTEN, SIGNED, AND FILED

Except for oral motions made during trial or when all parties are present, every pleading, plea, motion, application to the court for an order, or other form of request must be written and signed by the party or its attorney and must be filed with the court. A document may be filed with the court by personal or commercial delivery, by mail, or electronically, if the court allows electronic filing.

RULE 502.2. PETITION

(a) *Contents.* To initiate a suit, a petition must be filed with the court. A petition must contain:

(1) the name, address, telephone number, and fax number, if any, of the plaintiff and the plaintiff's attorney, if applicable;

(2) the name, address, and telephone number, if known, of the defendant;

(3) the amount of money, if any, the plaintiff seeks;

(4) a description and claimed value of any personal property the plaintiff seeks;

(5) the basis for the plaintiff's claim against the defendant; and

(6) if the plaintiff consents to email service of the answer and any other motions or pleadings, a statement consenting to email service and email contact information.

(b) *Justice Court Civil Case Information Sheet.* A justice court civil case information sheet, in the form promulgated by the Supreme Court of Texas, must accompany the filing of a petition and must be signed by the plaintiff or the plaintiff's attorney. The justice court civil case information sheet is for data collection for statistical and administrative purposes and does not affect any substantive right. The court may not reject a pleading because the pleading is not accompanied by a justice court civil case information sheet.

RULE 502.3. FEES; INABILITY TO PAY

(a) *Fees and Statement of Inability to Pay.* On filing the petition, the plaintiff must pay the appropriate filing fee and service fees, if any, with the court. A plaintiff who is unable to afford to pay the fees must file a sworn statement of inability to pay. Upon filing the statement, the clerk must docket the action, issue citation, and provide any other customary services.

(b) *Contents of Statement of Inability to Pay.*

(1) The statement must contain complete information as to the party's identity, nature and amount of governmental entitlement income, nature and amount of employment income, other income (interest, dividends, etc.), spouse's income if available to the party, property owned (other than homestead), cash or checking account, dependents, debts, and monthly expenses.

(2) The statement must contain the following: "I am unable to pay court fees. I verify that the statements made in this statement are true and correct." The statement must be sworn before a notary public or other officer authorized to administer oaths or be signed under penalty of perjury.

(c) *IOLTA Certificate.* If the party is represented by an attorney who is providing free legal services because of the party's indigence, without contingency, and the attorney is providing services either directly or by referral from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) program, the attorney may file an IOLTA certificate confirming that the IOLTA funded program screened the party for income eligibility under the IOLTA income guidelines. A party's statement of inability to pay accompanied by an attorney's IOLTA certificate may not be contested under (d).

(d) *Contest.* The defendant may file a contest of the statement of inability to pay at any time within 7 days after the day the defendant's answer is due. If the statement attests to receipt of government entitlement based on indigence, the statement may only be contested with regard to the veracity of the attestation. If contested, the judge must hold a hearing to determine the plaintiff's ability to pay. At the hearing, the burden is on the party who filed the statement to prove its inability to pay. The judge may, regardless of whether the defendant contests the statement, examine the statement and conduct a hearing to determine the plaintiff's ability to pay. If the judge determines that the plaintiff is able to afford the fees, the judge must enter a written order listing the reasons for the determination, and the plaintiff must pay the fees in the time specified in the order or the case will be dismissed without prejudice.

RULE 502.4. VENUE - WHERE A LAWSUIT MAY BE BROUGHT

(a) *Applicable Law.* Laws specifying the venue - the county and precinct where a lawsuit may be brought - are found in Chapter 15, Subchapter E of the Texas Civil Practice and Remedies Code, which is available online and for examination during the court's business hours.

(b) *General Rule.* Generally, a defendant in a small claims case as described in Rule 500.3(a) or a debt claim case as described in Rule 500.3(b) is entitled to be sued in one of the following venues:

(1) the county and precinct where the defendant resides;

(2) the county and precinct where the incident, or the majority of incidents, that gave rise to the claim occurred;

(3) the county and precinct where the contract or agreement, if any, that gave rise to the claim was to be performed; or

(4) the county and precinct where the property is located, in a suit to recover personal property.

(c) *Non-Resident Defendant; Defendant's Residence Unknown.* If the defendant is a non-resident of Texas, or if defendant's residence is unknown, the plaintiff may file the suit in the county and precinct where the plaintiff resides.

(d) *Motion to Transfer Venue.* If a plaintiff files suit in an improper venue, a defendant may challenge the venue selected by filing a motion to transfer venue. The motion must be filed before trial, no later than 21 days after the day the defendant's answer is filed, and must contain a sworn statement that the venue chosen by the plaintiff is improper and a specific county and precinct of proper venue to which transfer is sought. If the defendant fails to name a county and precinct, the court must instruct the defendant to do so and allow the defendant 7 days to cure the defect. If the defendant fails to correct the defect, the motion will be denied, and the case will proceed in the county and precinct where it was originally filed.

(1) *Procedure.*

(A) Judge to Set Hearing. If a defendant files a motion to transfer venue, the judge must set a hearing at which the motion will be considered.

(B) Response to Motion. A plaintiff may file a response to a defendant's motion to transfer venue.

(C) Evidence and Argument. The parties may present evidence and make legal arguments at the hearing. The defendant presents evidence and argument first. A witness may testify at a hearing, either in person or, with permission of the court, by means of telephone or an electronic communication system. Written documents offered by the parties may also be considered by the judge at the hearing.

(D) Judge's Decision. The judge must either grant or deny the motion to transfer venue. If the motion is granted, the judge must sign an order designating the court to which the case will be transferred. If the motion is denied, the case will be heard in the court in which the plaintiff initially filed suit.

(E) Review. Motions for rehearing and interlocutory appeals of the judge's ruling on venue are not permitted.

(F) Time for Trial of the Case. No trial may be held until at least the 14th day after the judge's ruling on the motion to transfer venue.

(G) Order. If the motion to transfer venue is granted, the court must issue an order of transfer stating the reason for the transfer and the name of the court to which the transfer is made. When such an order of transfer is made, the judge who issued the order must immediately make out a true and correct transcript of all the entries made on the docket in the case, certify the transcript, and send the transcript, with a certified copy of the bill of costs and the original papers in the case, to the court in the precinct to which the case has been transferred. The court receiving the case must then notify the plaintiff that the case has been received and, if the case is transferred to a different county, that the plaintiff has 14 days after receiving the notice to pay the filing fee in the new court, or file a sworn statement of inability to pay. The plaintiff is not entitled to a refund of any fees already paid. Failure to pay the fee or file a sworn statement of inability to pay will result in dismissal of the case without prejudice.

(e) *Fair Trial Venue Change.* If a party believes it cannot get a fair trial in a specific precinct or before a specific judge, the party may file a sworn motion stating such, supported by the sworn statements of two other credible persons, and specifying if the party is requesting a change of location or a change of judge. Except for good cause shown, this motion must be filed no less than 7 days before trial. If the party seeks a change of judge, the judge must exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the county judge must appoint a visiting judge to hear the case. If the party seeks a change in location, the case must be transferred to the nearest justice court in the county that is not subject to the same or some other disqualification. If there is only one justice of the peace precinct in the county, then the judge must exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the county judge must appoint a visiting judge to hear the case. In cases where exclusive jurisdiction is within a specific precinct, as in eviction cases, the only remedy available is a change of judge. A party may apply for relief under this rule only one time in any given lawsuit.

(f) *Transfer of Venue by Consent.* On the written consent of all parties or their attorneys, filed with the court, venue must be transferred to the court of any other justice of the peace of the county, or any other county.

RULE 502.5. ANSWER

(a) *Requirements.* A defendant must file with the court a written answer to a lawsuit as directed by the citation and must also serve a copy of the answer on the plaintiff. The answer must contain:

(1) the name, address, telephone number, and fax number, if any, of the defendant and the defendant's attorney, if applicable; and

(2) if the defendant consents to email service, a statement consenting to email service and email contact information.

(b) *General Denial.* An answer that denies all of the plaintiff's allegations and demands that they be proven without specifying the reasons is sufficient to constitute an answer or appearance and does not bar the defendant from raising any defense at trial.

(c) *Answer Docketed.* The defendant's appearance must be noted on the court's docket.

(d) *Due Date.* Unless the defendant is served by publication, the defendant's answer is due by the end of the 14th day after the day the defendant was served with the citation and petition, but

(1) if the 14th day is a Saturday, Sunday, or legal holiday, the answer is due on the next day that is not a Saturday, Sunday, or legal holiday; or

(2) if the 14th day falls on a day during which the court is closed before 5:00 PM, the answer is due on the court's next business day.

(e) *Due Date When Defendant Served by Publication.* If a defendant is served by publication, the defendant's answer is due by the end of the 42nd day after the day the citation was issued, but

(1) if the 42nd day is a Saturday, Sunday, or legal holiday, the answer is due on the next day that is not a Saturday, Sunday, or legal holiday; or

(2) if the 42nd day falls on a day during which the court is closed before 5:00 PM, the answer is due on the court's next business day.

RULE 502.6. COUNTERCLAIM; CROSS-CLAIM; THIRD-PARTY CLAIM

(a) *Counterclaim.* A defendant may file a petition stating as a counterclaim any claim against a plaintiff that is within the jurisdiction of the justice court, whether or not related to the claims in the plaintiff's petition. The defendant must file a counterclaim petition as provided in Rule 502.2, and must pay a filing fee or provide a sworn statement of inability to pay the fees. The court need not generate a citation for a counterclaim and no answer to the counterclaim need be filed. The defendant must serve a copy of the counterclaim as provided by Rule 501.4.

(b) *Cross-Claim.* A plaintiff seeking relief against another plaintiff, or a defendant seeking relief against another defendant may file a cross-claim. The filing party must file a cross-claim petition as provided in Rule 502.2, and must pay a filing fee or provide a sworn statement of inability to pay the fees. A citation must be issued and served as provided by Rule 501.2 on any party that has not yet filed a petition or an answer, as appropriate. If the party filed against has filed a petition or an answer, the filing party must serve the cross-claim as provided by Rule 501.4.

(c) *Third Party Claim.* A defendant seeking to bring another party into a suit who may be liable for all or part of the plaintiff's claim against the defendant may file a petition as provided in Rule 502.2, and must pay a filing fee or provide a sworn statement of inability to pay the fees. A citation must be issued and served as provided by Rule 501.2.

RULE 502.7. AMENDING AND CLARIFYING PLEADINGS

(a) *Amending Pleadings.* A party may withdraw something from or add something to a pleading, as long as the amended pleading is filed and served as provided by Rule 501.4 not less than 7 days before trial. The court may allow a pleading to be amended less than 7 days before trial if the amendment will not operate as a surprise to the opposing party.

(b) *Insufficient Pleadings.* A party may file a motion with the court asking that another party be required to clarify a pleading. The court must determine if the pleading is sufficient to place all parties on notice of the issues in the lawsuit, and may hold a hearing to make that determination. If the court determines a pleading is insufficient, the court must order the party to amend the pleading and set a date by which the party must amend. If a party fails to comply with the court's order, the pleading may be stricken.

RULE 503. DEFAULT JUDGMENT; PRE-TRIAL MATTERS; TRIAL

RULE 503.1. IF DEFENDANT FAILS TO ANSWER

(a) *Default Judgment.* If the defendant fails to file an answer by the date stated in Rule 502.5, the judge must ensure that service was proper, and may hold a hearing for this purpose. If it is determined that service was proper, the judge must render a default judgment in the following manner:

(1) *Claim Based on Written Document.* If the claim is based on a written document signed by the defendant, and a copy of the document has been filed with the court and served on the defendant, along with a sworn statement from the plaintiff that this is a true and accurate copy of the document and the relief sought is owed, and all payments, offsets or credits due to the defendant have been accounted for, the judge must render judgment for the plaintiff in the requested amount, without any necessity for a hearing. The plaintiff's attorney may also submit affidavits supporting an award of attorney fees to which the plaintiff is entitled, if any.

(2) *Other Cases.* Except as provided in (1), a plaintiff who seeks a default judgment against a defendant must request a hearing, orally or in writing. The plaintiff must appear at the hearing and provide evidence of its damages. If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant. With the permission of the court, a party may appear at a hearing by means of telephone or an electronic communication system.

(b) *Appearance.* If a defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not enter a default judgment and the case must be set for trial as described in Rule 503.3.

(c) *Post-Answer Default.* If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly.

(d) *Notice.* The plaintiff requesting a default judgment must provide to the clerk in writing the last known mailing address of the defendant at or before the time the judgment is signed. When a default judgment is signed, the clerk must immediately mail written notice of the judgment to the defendant at the address provided by the plaintiff, and note the fact of such mailing on the docket. The notice must state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, and the date the judgment was signed. Failure to comply with the provisions of this rule does not affect the finality of the judgment.

RULE 503.2. SUMMARY DISPOSITION

(a) *Motion.* A party may file a sworn motion for summary disposition of all or part of a claim or defense without a trial. The motion must set out all supporting facts. All documents on which the motion relies must be attached. The motion must be granted if it shows that:

(1) there are no genuinely disputed facts that would prevent a judgment in favor of the party;

(2) there is no evidence of one or more essential elements of a defense which the defendant must prove to defeat the plaintiff's claim; or

(3) there is no evidence of one or more essential elements of the plaintiff's claim.

(b) *Response.* The party opposing the motion may file a sworn written response to the motion.

(c) *Hearing.* The court must not consider a motion for summary disposition until it has been on file for at least 14 days. By agreement of the parties, the court may decide the motion and response without a hearing.

(d) *Order.* The court may enter judgment as to the entire case or may specify the facts that are established and direct such further proceedings in the case as are just.

RULE 503.3. SETTINGS AND NOTICE; POSTPONING TRIAL

(a) *Settings and Notice.* After the defendant answers, the case will be set on a pretrial docket or a trial docket at the discretion of the judge. The court must send a notice of the date, time, and place of this setting to all parties at their address of record no less than 45 days before the setting date, unless the judge determines that an earlier setting is required in the interest of justice. Reasonable notice of all subsequent settings must be sent to all parties at their addresses of record.

(b) *Postponing Trial.* A party may file a sworn motion requesting that the trial be postponed. The motion must state why a postponement is necessary. The judge, for good cause, may postpone any suit for a reasonable time.

RULE 503.4. PRETRIAL CONFERENCE

(a) *Conference Set; Issues.* If all parties have appeared in a suit, the court, at any party's request or on its own, may set a case for a pretrial conference. Appropriate issues for the pretrial conference include:

(1) discovery;

(2) the amendment or clarification of pleadings;

(3) the admission of facts and documents to streamline the trial process;

(4) a limitation on the number of witnesses at trial;

(5) the identification of facts, if any, which are not in dispute between the parties;

(6) mediation or other alternative dispute resolution services;

(7) the possibility of settlement;

(8) trial setting dates that are amenable to the court and all parties;

(9) the appointment of interpreters, if needed;

(10) the application of a Rule of Civil Procedure not in Part V or a Rule of Evidence; and

(11) any other issue that the court deems appropriate.

(b) *Eviction Cases.* The court must not schedule a pretrial conference in an eviction case if it would delay trial.

RULE 503.5. ALTERNATIVE DISPUTE RESOLUTION

(a) *State Policy.* The policy of this state is to encourage the peaceable resolution of disputes through alternative dispute resolution, including mediation, and the early settlement of pending litigation through voluntary settlement procedures. Judges and court administrators are responsible for carrying out this policy and developing an alternative dispute resolution system to encourage peaceable resolution in all justice court suits. For that purpose, the judge may order any case to mediation or another appropriate and generally accepted alternative dispute resolution process.

(b) *Eviction Cases.* The court must not order mediation or any other alternative dispute resolution process in an eviction case if it would delay trial.

RULE 503.6. TRIAL

(a) *Docket Called.* On the day of the trial setting, the judge must call all of the cases set for trial that day.

(b) *If Plaintiff Fails to Appear.* If the plaintiff fails to appear when the case is called for trial, the judge may postpone or dismiss the suit.

(c) *If Defendant Fails to Appear.* If the defendant fails to appear when the case is called for trial, the judge may postpone the case, or may proceed to take evidence. If the plaintiff proves its case, judgment must be awarded for the relief proven. If the plaintiff fails to prove its case, judgment must be rendered against the plaintiff.

RULE 504. JURY

RULE 504.1. JURY TRIAL DEMANDED

(a) *Demand.* Any party is entitled to a trial by jury. A written demand for a jury must be filed no later than 14 days before the date a case is set for trial. If the demand is not timely, the right to a jury is waived unless the late filing is excused by the judge for good cause.

(b) *Jury Fee.* Unless otherwise provided by law, a party demanding a jury must pay a fee of $22.00 or must file a sworn statement of inability to pay the fee at or before the time the party files a written request for a jury.

(c) *Withdrawal of Demand.* If a party who demands a jury and pays the fee withdraws the demand, the case will remain on the jury docket unless all other parties present agree to try the case without a jury. A party that withdraws its jury demand is not entitled to a refund of the jury fee.

(d) *No Demand.* If no party timely demands a jury and pays the fee, the judge will try the case without a jury.

RULE 504.2. EMPANELING THE JURY

(a) *Drawing Jury and Oath.* If no method of electronic draw has been implemented, the judge must write the names of all prospective jurors present on separate slips of paper as nearly alike as may be, place them in a box, mix them well, and then draw the names one by one from the box. The judge must list the names drawn and deliver a copy to each of the parties or their attorneys.

(b) *Oath.* After the draw, the judge must swear the panel as follows: "You solemnly swear or affirm that you will give true and correct answers to all questions asked of you concerning your qualifications as a juror."

(c) *Questioning the Jury.* The parties or their attorneys will be allowed to question jurors as to their ability to serve impartially in the trial but may not ask the jurors how they will rule in the case. The judge will have discretion to allow or disallow specific questions and determine the amount of time each side will have for this process.

(d) *Challenge for Cause.* A party may challenge any juror for cause. The challenge must be made during jury questioning. The party must explain to the judge why the juror will be prejudiced or biased and must therefore be excluded from the jury. The judge must evaluate the questions and answers given and either grant or deny the challenge. When a challenge for cause has been sustained, the juror must be excused.

(e) *Challenges Not for Cause.* After the judge determines any challenges for cause, each party may select up to 3 jurors to excuse for any reason or no reason at all. But no prospective juror may be excused for membership in a constitutionally protected class.

(f) *The Jury.* After all challenges, the first 6 prospective jurors remaining on the list constitute the jury to try the case.

(g) *If Jury Is Incomplete.* If challenges reduce the number of prospective jurors below 6, the judge must direct the sheriff or constable to summon others and allow them to be questioned and challenged by the parties as before, until at least 6 remain.

(h) *Jury Sworn.* When the jury has been selected, the judge must require them to take substantially the following oath: "You solemnly swear or affirm that you will render a true verdict according to the law and the evidence presented."

RULE 504.3. JURY NOT CHARGED

The judge must not charge the jury.

RULE 504.4. JURY VERDICT FOR SPECIFIC ARTICLES

When the suit is for the recovery of specific articles and the jury finds for the plaintiff, the jury must assess the value of each article separately, according to the evidence presented at trial.

RULE 505. JUDGMENT; NEW TRIAL

RULE 505.1. JUDGMENT

(a) *Judgment Upon Jury Verdict.* Where a jury has returned a verdict, the judge must announce the verdict in open court, note it in the court's docket, and render judgment accordingly.

(b) *Case Tried by Judge.* When a case has been tried before the judge without a jury, the judge must announce the decision in open court, note the decision in the court's docket, and render judgment accordingly.

(c) *Form.* A judgment must:

(1) clearly state the determination of the rights of the parties in the case;

(2) state who must pay the costs;

(3) direct the issuance of process necessary for enforcement;

(4) be signed by the judge; and

(5) be dated the date of the judge's signature.

(d) *Costs.* The judge must award costs allowed by law to the successful party.

(e) *Judgment for Specific Articles.* Where the judgment is for the recovery of specific articles, the judgment must order that the plaintiff recover such specific articles, if they can be found, and if not, then their value as assessed by the judge or jury with interest at the prevailing post-judgment interest rate.

RULE 505.2. ENFORCEMENT OF JUDGMENT

Justice court judgments are enforceable in the same method as in county and district court, except as provided by law. When the judgment is for personal property, the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such cases, enforce its judgment by attachment or fine.

RULE 505.3. MOTION TO SET ASIDE; MOTION TO REINSTATE; MOTION FOR NEW TRIAL

(a) *Motion to Reinstate after Dismissal.* A plaintiff whose case is dismissed may file a motion to reinstate the case no later than 14 days after the dismissal order is signed. The plaintiff must serve the defendant with a copy of the motion no later than the next business day using a method approved under Rule 501.4 The court may reinstate the case for good cause shown.

(b) *Motion to Set Aside Default.* A defendant against whom a default judgment is granted may file a motion to set aside the judgment no later than 14 days after the judgment is signed. The defendant must serve the plaintiff with a copy of the motion no later than the next business day

using a method approved under Rule 501.4. The court may set aside the judgment and set the case for trial for good cause shown.

(c) *Motion for New Trial.* A party may file a motion for a new trial no later than 14 days after the judgment is signed. The party must serve all other parties with a copy of the motion no later than the next business day using a method approved under Rule 501.4. The judge may grant a new trial upon a showing that justice was not done in the trial of the case. Only one new trial may be granted to either party.

(d) *Motion Not Required.* Failure to file a motion under this rule does not affect a party's right to appeal the underlying judgment.

(e) *Motion Denied as a Matter of Law.* If the judge has not ruled on a motion to set aside, motion to reinstate, or motion for new trial, the motion is automatically denied at 5:00 p.m. on the 21st day after the day the judgment was signed.

RULE 506. APPEAL

RULE 506.1. APPEAL

(a) *How Taken; Time.* A party may appeal a judgment by filing a bond, making a cash deposit, or filing a sworn statement of inability to pay with the justice court within 21 days after the judgment is signed or the motion to reinstate, motion to set aside, or motion for new trial, if any, is denied.

(b) *Amount of Bond; Sureties; Terms.* A plaintiff must file a $500 bond. A defendant must file a bond in an amount equal to twice the amount of the judgment. The bond must be supported by a surety or sureties approved by the judge. The bond must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(c) *Cash Deposit in Lieu of Bond.* In lieu of filing a bond, an appellant may deposit with the clerk of the court cash in the amount required of the bond. The deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(d) *Sworn Statement of Inability to Pay.*

(1) Filing; contest. An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a sworn statement of inability to pay. The statement must meet the requirements of Rule 502.3 and may be the same one that was filed with the petition.

(2) Contest. The statement may be contested as provided in Rule 502.3(d) within 7 days after the opposing party receives notice that the statement was filed.

(3) Appeal If Contest Sustained. If the contest is sustained, the appellant may appeal that decision by filing notice with the justice court within 7 days of that court's written order. The justice court must then forward all related documents to the county court for resolution. The county court must set the matter for hearing within 14 days and hear the contest de novo, as if there had been no previous hearing, and if the appeal is granted, must direct the justice court to transmit to the clerk of the county court the transcript, records, and papers of the case, as provided in these rules.

(4) If No Appeal or If Appeal Overruled. If the appellant does not appeal the ruling sustaining the contest, or if the county court denies the appeal, the appellant may, within five days, post an appeal bond or make a cash deposit in compliance with this rule.

(e) *Notice to Other Parties Required.* If a statement of inability to pay is filed, the court must provide notice to all other parties that the statement was filed no later than the next business day. Within 7 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4.

(f) *No Default on Appeal Without Compliance With Rule.* The county court to which an appeal is taken must not render default judgment against any party without first determining that the appellant has fully complied with this rule.

(g) *No Dismissal of Appeal Without Opportunity for Correction.* An appeal must not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing the appellant, after 7 days' notice from the court, the opportunity to correct such defect.

(h) *Appeal Perfected.* An appeal is perfected when a bond, cash deposit, or statement of inability to pay is filed in accordance with this rule.

(i) *Costs.* The appellant must pay the costs on appeal to a county court in accordance with Rule 143a.

RULE 506.2. RECORD ON APPEAL

When an appeal has been perfected from the justice court, the judge must immediately send to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case.

RULE 506.3. TRIAL DE NOVO

The case must be tried de novo in the county court. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial.

RULE 506.4. WRIT OF CERTIORARI

(a) *Application.* Except in eviction cases, after final judgment in a case tried in justice court, a party may apply to the county court for a writ of certiorari.

(b) *Grounds.* An application must be granted only if it contains a sworn statement setting forth facts showing that either:

(1) the justice court did not have jurisdiction; or

(2) the final determination of the suit worked an injustice to the applicant that was not caused by the applicant's own inexcusable neglect.

(c) *Bond, Cash Deposit, or Sworn Statement of Indigency to Pay Required.* If the application is granted, a writ of certiorari must not issue until the applicant has filed a bond, made a cash deposit, or filed a sworn statement of indigency that with Rule 145.

(d) *Time for Filing.* An application for writ of certiorari must be filed within 90 days after the date the final judgment is signed.

(e) *Contents of Writ.* The writ of certiorari must command the justice court to immediately make and certify a copy of the entries in the case on the docket, and immediately transmit the transcript of the proceedings in the justice court, together with the original papers and a bill of costs, to the proper court.

(f) *Clerk to Issue Writ and Citation.* When the application is granted and the bond, cash deposit, or sworn statement of indigency have been filed, the clerk must issue a writ of certiorari to the justice court and citation to the adverse party.

(g) *Stay of Proceedings.* When the writ of certiorari is served on the justice court, the court must stay further proceedings on the judgment and comply with the writ.

(h) *Cause Docketed.* The action must be docketed in the name of the original plaintiff, as plaintiff, and of the original defendant, as defendant.

(i) *Motion to Dismiss.* Within 30 days after the service of citation on the writ of certiorari, the adverse party may move to dismiss the certiorari for want of sufficient cause appearing in the affidavit, or for want of sufficient bond. If the certiorari is dismissed, the judgment must direct the justice court to proceed with the execution of the judgment below.

(j) *Amendment of Bond or Oath.* The affidavit or bond may be amended at the discretion of the court in which it is filed.

(j) *Trial De Novo.* The case must be tried de novo in the county court and judgment must be rendered as in cases appealed from justice courts. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial.

RULE 507. ADMINISTRATIVE RULES FOR JUDGES AND COURT PERSONNEL

RULE 507.1. PLENARY POWER

A justice court loses plenary power over a case when an appeal is perfected or if no appeal is perfected, 21 days after the later of the date judgment is signed or the date a motion to set aside, motion to reinstate, or motion for new trial, if any, is denied. In an eviction case for nonpayment of rent that is appealed by filing a statement of inability to pay, the court's plenary power is extended for 7 days beyond the date the appeal is perfected.

RULE 507.2. FORMS

The court may provide forms to enable a party to file documents that comply with these rules. No party may be forced to use the court's forms.

RULE 507.3. DOCKET AND OTHER RECORDS

(a) *Docket.* Each judge must keep a civil docket, which may be maintained electronically, containing the following information:

(1) the title of all suits commenced before the court;

(2) the date when the first process was issued against the defendant, when returnable, and the nature of that process;

(3) the date when the parties, or either of them, appeared before the court, either with or without a citation;

(4) a description of the petition and any documents filed with the petition;

(5) every adjournment, stating at whose request and to what time;

(6) the date of the trial, stating whether the same was by a jury or by the judge;

(7) the verdict of the jury, if any;

(8) the judgment signed by the judge and the date the judgment was signed;

(9) all applications for setting aside judgments or granting new trials and the orders of the judge thereon, with the date;

(10) the date of issuing execution, to whom directed and delivered, and the amount of debt, damages and costs and, when any execution is returned, the date of the return and the manner in which it was executed; and

(11) all stays and appeals that may be taken, and the date when taken, the amount of the bond and the names of the sureties.

(b) *Other Records.* The judge must also keep copies of all documents filed and such other dockets, books, and records as may be required by law or these rules, and must keep a fee book in which all costs accruing in every suit commenced before the court are taxed.

RULE 507.4. ISSUANCE OF WRITS

Every writ from the justice courts must be in writing and be issued and signed by the judge officially. The style thereof must be "The State of Texas." It must, except where otherwise specially provided by law or these rules, be directed to the person or party upon whom it is to be served, be made returnable to the court, and note the date of its issuance.

RULE 508. DEBT CLAIM CASES

RULE 508.1. APPLICATION

Rule 508 applies to a claim for the recovery of a debt brought by an assignee of a claim, a financial institution, a debt collector or collection agency, or a person or entity primarily engaged in the business of lending money at interest.

RULE 508.2. PETITION

(a) *Contents.* In addition to the information required by Rule 502.2, a petition filed in a suit governed by this rule must contain the following information:

(1) Credit Accounts. In a claim based upon a credit card, revolving credit, or open account, the petition must state:

(A) the account or card name;

(B) the account number (which may be masked);

(C) the date of issue or origination of the account, if known;

(D) the date of charge-off or breach of the account, if known;

(E) the amount owed as of a date certain; and

(F) whether the plaintiff seeks ongoing interest.

(2) Personal and Business Loans. In a claim based upon a promissory note or other promise to pay a specific amount as of a date certain, the petition must state:

(A) the date and amount of the original loan;

(B) whether the repayment of the debt was accelerated;

(C) the date final payment was due;

(D) the amount due as of the final payment date;

(E) the amount owed as of a date certain; and

(F) whether plaintiff seeks ongoing interest.

(3) Ongoing Interest. If a plaintiff seeks ongoing interest, the petition must state:

(A) the effective interest rate claimed;

(B) whether the interest rate is based upon contract or statute; and

(C) the dollar amount of interest claimed as of a date certain.

(4) Assigned Debt. If the debt that is the subject of the claim has been assigned or transferred, the petition must state:

(A) that the debt claim has been transferred or assigned;

(B) the date of the transfer or assignment;

(C) the name of any prior holders of the debt; and

(D) the name or a description of the original creditor.

RULE 508.3. DEFAULT JUDGMENT

(a) *Generally.* If the defendant does not file an answer to a claim by the answer date or otherwise appear in the case, the judge must promptly render a default judgment upon the plaintiff's proof of the amount of damages.

(b) *Proof of the Amount of Damages.*

(1) Evidence Must Be Served or Submitted. Evidence of plaintiff's damages must either be attached to the petition and served on the defendant or submitted to the court after defendant's failure to answer by the answer date.

(2) Form of Evidence. Evidence of plaintiff's damages may be offered in a sworn statement or in live testimony.

(3) Establishment of the Amount of Damages. The amount of damages is established by evidence:

(A) that the account or loan was issued to the defendant and the defendant is obligated to pay it;

(B) that the account was closed or the defendant breached the terms of the account or loan agreement;

(C) of the amount due on the account or loan as of a date certain after all payment credits and offsets have been applied; and

(D) that the plaintiff owns the account or loan and, if applicable, how the plaintiff acquired the account or loan.

(4) Documentary Evidence Offered By Sworn Statement. Documentary evidence may be considered if it is attached to a sworn statement made by the plaintiff or its representative, a prior holder of the debt or its representative, or the original creditor or its representative, that attests to the following:

(A) the documents were kept in the regular course of business;

(B) it was the regular course of business for an employee or representative with knowledge of the act recorded to make the record or to transmit information to be included in such record;

(C) the documents were created at or near the time or reasonably soon thereafter; and

(D) the documents attached are the original or exact duplicates of the original.

(5) Consideration of Sworn Statement. A judge is not required to accept a sworn statement if the source of information or the method or circumstances of preparation indicate lack of trustworthiness. But a judge may not reject a sworn statement only because it is not made by the original creditor.

(c) *Hearing.* The judge may enter a default judgment without a hearing if the plaintiff submits sufficient written evidence of its damages and should do so to avoid undue expense and delay. Otherwise, the plaintiff may request a default judgment hearing at which the plaintiff must appear, in person or by telephonic or electronic means, and prove its damages. If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant.

(d) *Appearance.* If the defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not render a default judgment and must set the case for trial.

(e) *Post-Answer Default.* If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly.

RULE 509. PROCEEDINGS TO ENFORCE LANDLORD'S DUTY TO REPAIR OR REMEDY RESIDENTIAL RENTAL PROPERTY

RULE 509.1. APPLICABILITY OF RULE

Rule 509 applies to a suit filed in a justice court by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant.

RULE 509.2. CONTENTS OF PETITION; COPIES; FORMS AND AMENDMENTS

(a) *Contents of Petition.* The petition must be in writing and must include the following:

(1) the street address of the residential rental property;

(2) a statement indicating whether the tenant has received in writing the name and business street address of the landlord and landlord's management company;

(3) to the extent known and applicable, the name, business street address, and telephone number of the landlord and the landlord's management company, on-premises manager, and rent collector serving the residential rental property;

(4) for all notices the tenant gave to the landlord requesting that the condition be repaired or remedied:

(A) the date of the notice;

(B) the name of the person to whom the notice was given or the place where the notice was given;

(C) whether the tenant's lease is in writing and requires written notice;

(D) whether the notice was in writing or oral;

(E) whether any written notice was given by certified mail, return receipt requested, or by registered mail; and

(F) whether the rent was current or had been timely tendered at the time notice was given;

(5) a description of the property condition materially affecting the physical health or safety of an ordinary tenant that the tenant seeks to have repaired or remedied;

(6) a statement of the relief requested by the tenant, including an order to repair or remedy a condition, a reduction in rent, actual damages, civil penalties, attorney's fees, and court costs;

(7) if the petition includes a request to reduce the rent:

(A) the amount of rent paid by the tenant, the amount of rent paid by the government, if known, the rental period, and when the rent is due; and

(B) the amount of the requested rent reduction and the date it should begin;

(8) a statement that the total relief requested does not exceed $10,000, excluding interest and court costs but including attorney's fees; and

(9) the tenant's name, address, and telephone number.

(b) *Copies.* The tenant must provide the court with copies of the petition and any attachments to the petition for service on the landlord.

(c) *Forms and Amendments.* A petition substantially in the form promulgated by the Supreme Court is sufficient. A suit may not be dismissed for a defect in the petition unless the tenant is given an opportunity to correct the defect and does not promptly correct it.

RULE 509.3. CITATION: ISSUANCE; APPEARANCE DATE; ANSWER

(a) *Issuance.* When the tenant files a written petition with a justice court, the judge must immediately issue citation directed to the land-

lord, commanding the landlord to appear before such judge at the time and place named in the citation.

(b) *Appearance Date; Answer.* The appearance date on the citation must not be less than 10 days nor more than 21 days after the petition is filed. For purposes of this rule, the appearance date on the citation is the trial date. The landlord may, but is not required to, file a written answer on or before the appearance date.

RULE 509.4. SERVICE AND RETURN OF CITATION; ALTERNATIVE SERVICE OF CITATION

(a) *Service and Return of Citation.* The sheriff, constable, or other person authorized by Rule 501.2 who receives the citation must serve the citation by delivering a copy of it, along with a copy of the petition and any attachments, to the landlord at least 6 days before the appearance date. At least one day before the appearance date, the person serving the citation must file a return of service with the court that issued the citation. The citation must be issued, served, and returned in like manner as ordinary citations issued from a justice court.

(b) *Alternative Service of Citation.*

(1) If the petition does not include the landlord's name and business street address, or if, after making diligent efforts on at least two occasions, the officer or authorized person is unsuccessful in serving the citation on the landlord under (a), the officer or authorized person must serve the citation by delivering a copy of the citation, petition, and any attachments to:

(A) the landlord's management company if the tenant has received written notice of the name and business street address of the landlord's management company; or

(B) if (b)(1)(A) does not apply and the tenant has not received the landlord's name and business street address in writing, the landlord's authorized agent for service of process, which may be the landlord's management company, on-premise manager, or rent collector serving the residential rental property.

(2) If the officer or authorized person is unsuccessful in serving citation under (b)(1) after making diligent efforts on at least two occasions at either the business street address of the landlord's management company, if (b)(1)(A) applies, or at each available business street address of the landlord's authorized agent for service of process, if (b)(1)(B) applies, the officer or authorized person must execute and file in the justice court a sworn statement that the officer or authorized person made diligent efforts to serve the citation on at least two occasions at all available business street addresses of the landlord and, to the extent applicable, the landlord's management company, on-premises manager, and rent collector serving the residential rental property, providing the times, dates, and places of each attempted service. The judge may then authorize the officer or authorized person to serve citation by:

(A) delivering a copy of the citation, petition, and any attachments to someone over the age of 16 years, at any business street address listed in the petition, or, if nobody answers the door at a business street address, either placing the citation, petition, and any attachments through a door mail chute or slipping them under the front door, and if neither of these latter methods is practical, affixing the citation, petition, and any attachments to the front door or main entry to the business street address;

(B) within 24 hours of complying with (b)(2)(A), sending by first class mail a true copy of the citation, petition, and any attachments addressed to the landlord at the landlord's business street address provided in the petition; and

(C) noting on the return of the citation the date of delivery under (b)(2)(A) and the date of mailing under (b)(2)(B).

The delivery and mailing to the business street address under (b)(2)(A)-(B) must occur at least 6 days before the appearance date. At least one day before the appearance date, a return of service must be completed and filed in accordance with Rule 501.3 with the court that issued the citation. It is not necessary for the tenant to request the alternative service authorized by this rule.

RULE 509.5. DOCKETING AND TRIAL; FAILURE TO APPEAR

(a) *Docketing and Trial.* The case must be docketed and tried as other cases. The judge may develop the facts of the case in order to ensure justice.

(b) *Failure to Appear.*

(1) If the tenant appears at trial and the landlord has been duly served and fails to appear at trial, the judge may proceed to hear evidence. If the tenant establishes that the tenant is entitled to recover, the judge must render judgment against the landlord in accordance with the evidence.

(2) If the tenant fails to appear for trial, the judge may dismiss the suit.

RULE 509.6. JUDGMENT: AMOUNT; FORM AND CONTENT; ISSUANCE AND SERVICE; FAILURE TO COMPLY

(a) *Amount.* Judgment may be rendered against the landlord for failure to repair or remedy a condition at the residential rental property if the total judgment does not exceed $10,000, excluding interest and court costs but including attorney's fees. Any party who prevails in a suit brought under these rules may recover the party's court costs and reasonable attorney's fees as allowed by law.

(b) *Form and Content.*

(1) The judgment must be in writing, signed, and dated and must include the names of the parties to the proceeding and the street address of the residential rental property where the condition is to be repaired or remedied.

(2) In the judgment, the judge may:

(A) order the landlord to take reasonable action to repair or remedy the condition;

(B) order a reduction in the tenant's rent, from the date of the first repair notice, in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;

(C) award a civil penalty of one month's rent plus $500;

(D) award the tenant's actual damages; and

(E) award court costs and attorney's fees, excluding any attorney's fees for a claim for damages relating to a personal injury.

(3) If the judge orders the landlord to repair or remedy a condition, the judgment must include in reasonable detail the actions the landlord must take to repair or remedy the condition and the date when the repair or remedy must be completed.

(4) If the judge orders a reduction in the tenant's rent, the judgment must state:

(A) the amount of the rent the tenant must pay, if any;

(B) the frequency with which the tenant must pay the rent;

(C) the condition justifying the reduction of rent;

(D) the effective date of the order reducing rent;

(E) that the order reducing rent will terminate on the date the condition is repaired or remedied; and

(F) that on the day the condition is repaired or remedied, the landlord must give the tenant written notice, served in accordance with Rule 501.4, that the condition justifying the reduction of rent has been repaired or remedied and the rent will revert to the rent amount specified in the lease.

(c) *Issuance and Service.* The judge must issue the judgment. The judgment may be served on the landlord in open court or by any means provided in Rule 501.4 at an address listed in the citation, the address listed on any answer, or such other address the landlord furnishes to the court in writing. Unless the judge serves the landlord in open court or by other means provided in Rule 501.4, the sheriff, constable, or other authorized person who serves the landlord must promptly file a return of service in the justice court.

(d) *Failure to Comply.* If the landlord fails to comply with an order to repair or remedy a condition or reduce the tenant's rent, the failure is grounds for citing the landlord for contempt of court under Section 21.002 of the Texas Government Code.

RULE 509.7. COUNTERCLAIMS

Counterclaims and the joinder of suits against third parties are not permitted in suits under these rules. Compulsory counterclaims may be brought in a separate suit. Any potential causes of action, including a compulsory counterclaim, that are not asserted because of this rule are not precluded.

RULE 509.8. APPEAL: TIME AND MANNER; PERFECTION; EFFECT; COSTS; TRIAL ON APPEAL

(a) *Time and Manner.* Either party may appeal the decision of the justice court to a statutory county court or, if there is no statutory county court with jurisdiction, a county court or district court with jurisdiction by filing a written notice of appeal with the justice court within 21 days after the date the judge signs the judgment. If the judgment is amended in any respect, any party has the right to appeal within 21 days after the date the judge signs the new judgment, in the same manner set out in this rule.

(b) *Perfection.* The posting of an appeal bond is not required for an appeal under this rule, and the appeal is considered perfected with the filing of a notice of appeal. Otherwise, the appeal is in the manner provided by law for appeal from a justice court.

(c) *Effect.* The timely filing of a notice of appeal stays the enforcement of any order to repair or remedy a condition or reduce the tenant's rent, as well as any other actions.

(d) *Costs.* The appellant must pay the costs on appeal to a county court in accordance with Rule 143a.

(e) *Trial on Appeal.* On appeal, the parties are entitled to a trial de novo. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. Either party is entitled to trial by jury on timely request and payment of a fee, if required. An appeal of a judgment of a justice court under these rules takes precedence in the county court and may be held at any time after the eighth day after the date the transcript is filed in the county court.

RULE 509.9. EFFECT OF WRIT OF POSSESSION

If a judgment for the landlord for possession of the residential rental property becomes final, any order to repair or remedy a condition is vacated and unenforceable.

RULE 510. EVICTION CASES

RULE 510.1. APPLICATION

Rule 510 applies to a suit to recover possession of real property under Chapter 24 of the Texas Property Code.

RULE 510.2. COMPUTATION OF TIME FOR EVICTION CASES

Rule 500.5 applies to the computation of time in eviction case. But if a document is filed by mail and not received by the court by the due date, the court may take any action authorized by these rules, including issuing a writ of possession requiring a tenant to leave the property.

RULE 510.3. PETITION

(a) *Contents.* In addition to the requirements of Rule 502.2, a petition in an eviction case must be sworn to by the plaintiff and must contain:

(1) a description, including the address, if any, of the premises that the plaintiff seeks possession of;

(2) a description of the facts and the grounds for eviction;

(3) a description of when and how notice to vacate was delivered;

(4) the total amount of rent due and unpaid at the time of filing, if any; and

(5) a statement that attorney fees are being sought, if applicable.

(b) *Where Filed.* The petition must be filed in the precinct where the premises is located. If it is filed elsewhere, the judge must dismiss the case. The plaintiff will not be entitled to a refund of the filing fee, but will be refunded any service fees paid if the case is dismissed before service is attempted.

(c) *Defendants Named.* If the eviction is based on a written residential lease, the plaintiff must name as defendants all tenants obligated under the lease residing at the premises whom plaintiff seeks to evict. No judgment or writ of possession may issue or be executed against a tenant obligated under a lease and residing at the premises who is not named in the petition and served with citation.

(d) *Claim for Rent.* A claim for rent within the justice court's jurisdiction may be asserted in an eviction case.

(e) *Only Issue.* The court must adjudicate the right to actual possession and not title. Counterclaims and the joinder of suits against third parties are not permitted in eviction cases. A claim that is not asserted because of this rule can be brought in a separate suit in a court of proper jurisdiction.

RULE 510.4. ISSUANCE, SERVICE, AND RETURN OF CITATION

(a) *Issuance of Citation; Contents.* When a petition is filed, the court must immediately issue citation directed to each defendant. The citation must:

(1) be styled "The State of Texas";

(2) be signed by the clerk under seal of court or by the judge;

(3) contain the name, location, and address of the court;

(4) state the date of filing of the petition;

(5) state the date of issuance of the citation;

(6) state the file number and names of parties;

(7) state the plaintiff's cause of action and relief sought;

(8) be directed to the defendant;

(9) state the name and address of attorney for plaintiff, or if the plaintiff does not have an attorney, the address of plaintiff;

(10) state the day the defendant must appear in person for trial at the court issuing citation, which must not be less than 10 days nor more than 21 days after the petition is filed;

(11) notify the defendant that if the defendant fails to appear in person for trial, judgment by default may be rendered for the relief demanded in the petition;

(12) inform the defendant that, upon timely request and payment of a jury fee no later than 3 days before the day set for trial, the case will be heard by a jury;

(13) contain all warnings required by Chapter 24 of the Texas Property Code; and

(14) include the following statement: "For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

(b) *Service and Return of Citation.*

(1) Who May Serve. Unless otherwise authorized by written court order, citation must be served by a sheriff or constable.

(2) Method of Service. The constable, sheriff, or other person authorized by written court order receiving the citation must execute it by delivering a copy with a copy of the petition attached to the defendant, or by leaving a copy with a copy of the petition attached with some person, other than the plaintiff, over the age of 16 years, at the defendant's usual place of residence, at least 6 days before the day set for trial.

(3) Return of Service. At least one day before the day set for trial, the constable, sheriff, or other person authorized by written court order must complete and file a return of service in accordance with Rule 501.3 with the court that issued the citation.

(c) *Alternative Service by Delivery to the Premises.*

(1) When Allowed. The citation may be served by delivery to the premises if:

(A) the constable, sheriff, or other person authorized by written court order is unsuccessful in serving the citation under (b);

(B) the petition lists all home and work addresses of the defendant that are known to the plaintiff and states that the plaintiff knows of no other home or work addresses of the defendant in the county where the premises are located; and

(C) the constable, sheriff, or other person authorized files a sworn statement that it has made diligent efforts to serve such citation on at least two occasions at all addresses of the defendant in the county where the premises are located, stating the times and places of attempted service.

(2) Authorization. The judge must promptly consider a sworn statement filed under (1)(C) and determine whether citation may be served by delivery to the premises. The plaintiff is not required to make a request or motion for alternative service.

(3) Method. If the judge authorizes service by delivery to the premises, the constable, sheriff, or other person authorized by written court order must, at least 6 days before the day set for trial:

(A) deliver a copy of the citation with a copy of the petition attached to the premises by placing it through a door mail chute or slipping it under the front door; if neither method is possible, the officer may securely affix the citation to the front door or main entry to the premises; and

(B) deposit in the mail a copy of the citation with a copy of the petition attached, addressed to defendant at the premises and sent by first class mail.

(4) Notation on Return. The constable, sheriff, or other person authorized by written court order must note on the return of service the date the citation was delivered and the date it was deposited in the mail.

RULE 510.5. REQUEST FOR IMMEDIATE POSSESSION

(a) *Immediate Possession Bond.* The plaintiff may, at the time of filing the petition or at any time prior to final judgment, file a possession bond to be approved by the judge in the probable amount of costs of suit and damages that may result to defendant in the event that the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages that are adjudged against plaintiff.

(b) *Notice to Defendant.* The court must notify a defendant that the plaintiff has filed a possession bond. The notice must be served in the same manner as service of citation and must inform the defendant that if the defendant does not file an answer or appear for trial, and judgment for possession is granted by default, an officer will place the plaintiff in possession of the property on or after the 7th day after the date defendant is served with the notice.

(c) *Time for Issuance and Execution of Writ.* If judgment for possession is rendered by default and a possession bond has been filed, approved, and served under this rule, a writ of possession must issue immediately. The writ must not be executed before the 7th day after the date defendant is served with notice under (b).

(c) *Effect of Appearance.* If the defendant files an answer or appears at trial, no writ of possession may issue before the 6th day after the date a judgment for possession is signed.

RULE 510.6. TRIAL DATE; ANSWER; DEFAULT JUDGMENT

(a) *Trial Date and Answer.* The defendant must appear for trial on the day set for trial in the citation. The defendant may, but is not required to, file a written answer with the court on or before the day set for trial in the citation.

(b) *Default Judgment.* If the defendant fails to appear at trial and fails to file an answer before the case is called for trial, the allegations of the complaint must be taken as admitted and judgment by default rendered accordingly. If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence and render judgment accordingly.

(c) *Notice of Default.* When a default judgment is signed, the clerk must immediately mail written notice of the judgment by first class mail to the defendant at the address of the premises.

RULE 510.7. TRIAL

(a) *Trial.* An eviction case will be docketed and tried as other cases. No eviction trial may be held less than 6 days after service under Rule 510.4 has been obtained.

(b) *Jury Trial Demanded.* Any party may file a written demand for trial by jury by making a request to the court at least 3 days before the trial date. The demand must be accompanied by payment of a jury fee or by filing a sworn statement of inability to pay the jury fee. If a jury is demanded by either party, the jury will be impaneled and sworn as in other cases; and after hearing the evidence it will return its verdict in favor of the plaintiff or the defendant. If no jury is timely demanded by either party, the judge will try the case.

(c) *Limit on Postponement.* Trial in an eviction suit must not be postponed more than once or for more than 7 days unless both parties agree in writing.

RULE 510.8. JUDGMENT; WRIT; NO NEW TRIAL

(a) *Judgment for Plaintiff.* If the judgment or verdict is in favor of the plaintiff, the judge must render judgment for plaintiff for possession of the premises, costs, delinquent rent up to the date of entry of judgment, if any, and attorney fees if recoverable by law.

(b) *Judgment for Defendant.* If the judgment or verdict is in favor of the defendant, the judge must render judgment for defendant against the plaintiff for costs and attorney fees if recoverable by law.

(c) *Writ.* If the judgment or verdict is in favor of the plaintiff, the judge must award a writ of possession upon demand of the plaintiff and payment of any required fees.

(1) Time to Issue. No writ of possession may issue before the sixth day after the date the judgment is signed, except as provided by Rule 510.5. A writ of possession may not be issued or executed after the 90th day after a judgment for possession is signed.

(2) Effect of Appeal. A writ of possession must not issue if an appeal is perfected and, if applicable, rent is paid into the registry, as required by these rules.

(d) *No Motion For New Trial.* No motion for new trial may be filed.

RULE 510.9. APPEAL

(a) *How Taken; Time.* A party may appeal a judgment in an eviction case by filing a bond, making a cash deposit, or filing a sworn statement of inability to pay with the justice court within 5 days after the judgment is signed.

(b) *Amount of Security; Terms.* The justice court judge will set the amount of the bond or cash deposit to include the items enumerated in Rule 510.11. The bond or cash deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(c) *Sworn Statement of Inability to Pay.*

(1) Filing. An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a sworn statement of inability to pay. The statement must meet the requirements of Rule 502.3.

(2) Contest. The statement may be contested as provided in Rule 502.3(d) within 5 days after the opposing party receives notice that the statement was filed.

(3) Appeal If Contest Sustained. If the contest is sustained, the appellant may appeal that decision by filing notice with the justice court within 5 days of that court's written order. The justice court must then forward all related documents to the county court for resolution. The county court must set the matter for hearing within 5 days and hear the contest de novo, as if there had been no previous hearing, and, if the appeal is granted, must direct the justice court to transmit to the clerk of the county court the transcript, records, and papers of the case, as provided in these rules.

(4) If No Appeal or If Appeal Overruled. If the appellant does not appeal the ruling sustaining the contest, or if the county court denies the appeal, the appellant may, within one business day, post an appeal bond or make a cash deposit in compliance with this rule.

(5) Payment of Rent in Nonpayment of Rent Appeals.

(A) Notice. If a defendant appeals an eviction for nonpayment of rent by filing a sworn statement of inability to pay, the justice court must provide to the defendant a written notice at the time the statement is filed that contains the following information in bold or conspicuous type:

(i) the amount of the initial deposit of rent, equal to one rental period's rent under the term of the rental agreement, that the defendant must pay into the justice court registry;

(ii) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;

(iii) the calendar date by which the initial deposit must be paid into the justice court registry, which must be within 5 days of the date the sworn statement of inability to pay is filed; and

(iv) a statement that failure to pay the required amount into the justice court registry by the required date may result in the court issuing a writ of possession without hearing.

(B) Defendant May Remain in Possession. A defendant who appeals an eviction for nonpayment of rent by filing a sworn statement of inability to pay is entitled to stay in possession of the premises during the pendency of the appeal by complying with the following procedure:

(i) Within 5 days of the date that the defendant files a sworn statement of inability to pay, it must pay into the justice court registry the amount set forth in the notice provided at the time the defendant filed the statement. If the defendant fails to pay the designated amount into the justice court registry within 5 days and the transcript has not been transmitted to the county clerk, the landlord is entitled, upon request and payment of the applicable fee, to a writ of possession, which the justice court must issue immediately and without hearing.

(ii) During the appeal process as rent becomes due under the rental agreement, the defendant must pay the designated amount into the county court registry within 5 days of the rental due date under the terms of the rental agreement. If a government agency is responsible for all or a portion of the rent, the defendant must pay only that portion of the rent determined by the justice court to be paid during appeal. Either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by filing a contest within 5 days after the judgment is signed. If a contest is filed, the justice court must notify the parties and hold a hearing on the contest within 5 days. If the defendant objects to the justice court's ruling at the hearing, the defendant is required to pay only the portion claimed to be owed by the defendant until the issue is tried in county court.

(iii) If the defendant fails to pay the designated amount into the court registry within the time limits prescribed by these rules, the plaintiff may file a notice of default in county court. Upon sworn motion and a showing of default, the court must issue a writ of possession.

(iv) The plaintiff may withdraw any or all rent in the county court registry upon sworn motion and hearing, prior to final determination of the case, showing just cause; dismissal of the appeal; or order of the court after final hearing.

(v) All hearings and motions under this subparagraph are entitled to precedence in the county court.

(d) *Notice to Other Parties Required.* If a statement of inability to pay is filed, the court must provide notice to all other parties that the statement was filed no later than the next business day. Within 5 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4.

(e) *No Default on Appeal Without Compliance With Rule.* No judgment may be taken by default against the adverse party in the court to which the case has been appealed without first showing substantial compliance with this rule.

(f) *Appeal Perfected.* An appeal is perfected when a bond, cash deposit, or statement of inability to pay is filed in accordance with this rule.

RULE 510.10. RECORD ON APPEAL; DOCKETING; TRIAL DE NOVO

(a) *Preparation and Transmission of Record.* When an appeal has been perfected, the judge must stay all further proceedings on the judgment except as provided by these rules and must immediately send to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case together with any money in the court registry, including sums tendered pursuant to Rule 510.9(c)(5)(B).

(b) *Docketing; Notice.* The county clerk must docket the case and must immediately notify the parties of the date of receipt of the transcript and the docket number of the case. The notice must advise the defendant that it must file a written answer in the county court within 8 days if one was not filed in the justice court.

(c) *Trial De Novo.* The case must be tried de novo in the county court. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. The trial, as well as any hearings and motions, is entitled to precedence in the county court.

RULE 510.11. DAMAGES ON APPEAL

On the trial of the case in the county court the appellant or appellee will be permitted to plead, prove and recover his damages, if any, suffered for withholding or defending possession of the premises during the pendency of the appeal. Damages may include but are not limited to loss of rentals during the pendency of the appeal and attorney fees in the justice and county courts provided, as to attorney fees, that the requirements of Section 24.006 of the Texas Property Code have been met. Only the party prevailing in the county court will be entitled to recover damages against the adverse party. The prevailing party will also be entitled to recover court costs and to recover against the sureties on the appeal bond in cases where the adverse party has executed an appeal bond.

RULE 510.12. JUDGMENT BY DEFAULT ON APPEAL

An eviction case appealed to county court will be subject to trial at any time after the expiration of 8 days after the date the transcript is filed in the county court. If the defendant has filed a written answer in the justice court, it must be taken to constitute his appearance and answer in the county court and may be amended as in other cases. If the defendant made no answer in writing in the justice court and fails to file a written answer within 8 days after the transcript is filed in the county court, the allegations of the complaint may be taken as admitted and judgment by default may be entered accordingly.

RULE 510.13. WRIT OF POSSESSION ON APPEAL The writ of possession, or execution, or both, will be issued by the clerk of the county court according to the judgment rendered, and the same will be executed by the sheriff or constable, as in other cases. The judgment of the county court may not be stayed unless within 10 days from the judgment the appellant files a supersedeas bond in an amount set by the county court pursuant to Section 24.007 of the Texas Property Code.

JUSTICE COURT CIVIL CASE INFORMATION SHEET (2/13)

CAUSE NUMBER *(FOR CLERK USE ONLY)*: _____

STYLED _____
(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:		**2. Names of parties in case:**
Name:	Telephone:	Plaintiff(s):
Address:	Fax:	Defendant(s):
City/State/Zip:	State Bar No:	[Attach additional page as necessary to list all parties]
Email:		
Signature:		

3. Indicate case type, or identify the most important issue in the case *(select only 1)*:

☐ ***Debt Claim***: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than $10,000 in damages, excluding statutory interest and court costs but including attorney fees, if any.	☐ ***Eviction:*** An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than $10,000, including costs and attorney fees, if any.
☐ ***Repair and Remedy***: A repair and remedy case is a lawsuit brought to seek judicial remedy for the alleged failure of a landlord to remedy or repair a condition as required by Chapter 92 of the Texas Property Code. The relief sought can be for no more than $10,000, excluding statutory interest and court costs but including attorney fees, if any.	☐ ***Small Claims:*** A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, or personal property. The claim can be for no more than $10,000 excluding statutory interest and court costs but including attorney fees, if any.

TRD-201300616
Marisa Secco
Rules Attorney
Supreme Court of Texas
Filed: February 13, 2013

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Texas Department of Transportation

Notice of Public Hearing on Proposed Restrictions on Use of State Highway - Interstate Highway 40, Potter County

The Texas Department of Transportation (department) will conduct a public hearing to receive comments on a proposed restriction initiated by the department establishing lane use restrictions for certain classes of vehicles on Interstate Highway 40 in Potter County.

In accordance with Transportation Code, §545.0651 and 43 TAC §§25.601 - 25.604, the department is proposing to initiate a lane use

restriction applicable to trucks, as defined in Transportation Code, §541.201, with three or more axles, and to truck tractors, also as defined in Transportation Code, §541.201, regardless of whether the truck tractor is drawing another vehicle or trailer. The proposed restriction would prohibit those vehicles from using the left or inside lane on Interstate Highway 40 in both directions from approximately Coulter Street through Potter County to approximately Pullman Road.

The proposed restrictions would apply 24 hours a day, 7 days a week, and would allow the operation of those vehicles in a prohibited traffic lane for the purposes of passing another vehicle or entering or exiting the highway.

In accordance with 43 TAC §25.604, the department will evaluate the impact of the proposed restriction's compliance with the requirements of Transportation Code, §545.0651 and 43 TAC §§25.601 - 25.604, and will hold a public hearing to receive comments on the proposed restriction. The hearing will be held at 6:00 p.m. on March 28, 2013, at the following location:

Amarillo District Office (Human Resources Conference room)

5715 Canyon Drive

Amarillo, Texas 79110

All interested citizens are invited to attend the hearing and to provide input. Those desiring to make official comments may register starting at 5:30 p.m. Oral and written comments may be presented at the public hearing and written comments may be submitted by regular postal mail during the 30-day public comment period. Written comments may be submitted to Ronald Johnston, P.E., District Engineer, Amarillo District, Texas Department of Transportation, P.O. Box 7368, Amarillo, Texas 79114-7368. The deadline for receipt of written comments is 5:00 p.m. on April 1, 2013.

Persons with disabilities who plan to attend the public hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact Michael Fowler, P.E. at (806) 356-3261 at least two business days prior to the hearing so that appropriate arrangements can be made. For more information concerning the public hearing, please contact Michael Fowler, P.E. at (806) 356-3261.

TRD-201300725
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: February 20, 2013

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Texas Administrative Code, Title 43, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.

Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-201300724
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: February 20, 2013

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Tyler County

Request for Comments and Proposals from Parties Interested in Providing Additional Medicaid Beds in Tyler County, Texas

Section 32.0244 of the Texas Human Resources Code permits a County Commissioners Court of a county with no more than two (2) nursing homes to request that the Department of Aging and Disability Services (DADS) contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Commissioners Court of Tyler County is considering requesting that DADS contract for more Medicaid nursing facility beds in Tyler County. The Commissioners Court is soliciting comments on whether the request should be made. Further, the Commissioners Court seeks proposals from persons interested in providing additional Medicaid beds in Tyler County, including persons providing Medicaid beds in a nursing facility with a high occupancy rate, to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid nursing facility beds.

Comments and proposals for the Department of Aging and Disability Services to contract for additional Medicaid beds in Tyler County should be presented at the public hearing scheduled for Thursday, March 14, 2013, at 10:00 a.m. in Room 101 of the Tyler County Courthouse, 100 W. Bluff, Woodville Texas.

TRD-201300701
Jacques L. Blanchette
County Judge
Tyler County
Filed: February 19, 2013

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Texas Water Development Board

Applications for February 2013

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73643, a request from the City of Edcouch, P.O. Box 100, Edcouch, Texas 78538, received July 2, 2012, for financial assistance in the amount of $3,468,600, consisting of a $2,413,600 loan and $1,055,000 in loan forgiveness from the Clean Water State Revolving Fund to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #73645, a request from the City of Falfurrias, P.O. Drawer E, Falfurrias, Texas 78355, received July 3, 2012, for a loan in the amount of $385,000 from the Clean Water State Revolving Fund to finance planning and design costs relating to wastewater system improvements.

Project ID #73654, a request from the City of Grand Prairie, P.O. Box 534045, Grand Prairie, Texas 75053-4045, received October 31, 2012, for financial assistance in the amount of $2,079,431, consisting of a $1,805,000 loan and $274,431 in loan forgiveness from the Clean Water State Revolving Fund to finance construction costs relating to wastewater system improvements, utilizing the pre-design funding option.

Project ID #73652, a request from the City of Houston, P.O. Box 1562, Houston, Texas 77251-1562, received October 22, 2012, for a loan in

the amount of $65,000,000 from the Clean Water State Revolving Fund to finance construction costs relating to wastewater system improvements utilizing the pre-design funding option.

Project ID #73656, a request from the City of Ingram, 230 Hwy. 39, Ingram, Texas 78025-3264, received November 1, 2012, for financial assistance in the amount of a $175,000 loan from the Clean Water State Revolving Fund to finance planning and design costs relating to wastewater system improvements.

Project ID #62592, a request from the City of Amarillo, P.O. Box 1971, Amarillo, Texas 79105-1971, received November 8, 2012, for a loan in the amount of $1,310,000 from the Drinking Water State Revolving Fund to finance planning, acquisition and design costs relating to water system improvements.

Project ID #62592, a request from the City of Del Rio, 109 W. Broadway, Del Rio, Texas 78840-5502, received October 8, 2012, for a loan in the amount of $1,000,000 from the Drinking Water State Revolving Fund to finance planning and design costs relating to water system improvements.

Project ID #62556, a request from the City of Eagle Pass, P.O. Box 808, Eagle Pass, Texas 78853, received August 31, 2012, for financial assistance in the amount of $8,223,296, consisting of a $5,795,000 loan and $2,428,296 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #62509, a request from the North San Saba Water Supply Corporation, P.O. Box 598, San Saba, Texas 76877-0598, received August 31, 2012, for financial assistance in the amount of $2,503,816, consisting of a $335,000 loan and $2,168,816 in loan forgiveness from the Drinking Water State Revolving Fund to finance construction costs relating to water system improvements.

Project ID #62538, a request from the City of Pharr, P.O. Box 1729, Pharr, Texas 78577, received July 24, 2012, for financial assistance in the amount of $12,406,688, consisting of $8,725,000 loan and $3,681,688 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #62582, a request from the Upper Leon River Municipal Water District, 2250 Hwy. 2861, Comanche, Texas 76442, received August 31, 2012, for financial assistance in the amount of $1,176,272, consisting of a $775,000 loan and $401,272 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning and design costs relating to water system improvements.

Project ID #62587, a request from the White River Municipal Water District, 2880 FM 2794, Spur, Texas 79370, received September 4, 2012, for financial assistance in the amount of $2,110,000, consisting of a $1,055,000 loan and $1,055,000 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning, acquisition, and design costs relating to water system improvements.

Project ID #10436, a request from the Edom Water Supply Corporation, P.O. Box 245, Brownsboro, Texas 75756-0245, received November 8, 2012, for a grant in the amount of $61,200 from the Economically Distressed Areas Program Research and Planning Fund for the preparation of a water facility plan.

Project ID #21724, a request from Bitter Creek Water Supply Corporation, P.O. Box 1177, Sweetwater, Texas 79556-1177, received September 10, 2012, for a loan in the amount of $7,500,000 from the Rural Water Assistance Fund to finance water system improvements, utilizing the pre-design funding option.

Project ID #21728, a request from the U & F Water Supply Corporation, 720 Armadillo Lane, Snyder, Texas 79549-0362, received October 11, 2012, for loan in the amount of $1,200,000 from the Rural Water Assistance Fund to finance water system improvements, utilizing the pre-design funding option.

Project ID #21726, a request from the Markham Municipal Utility District, P.O. Box 311, Markham, Texas 77456-0311, received September 20, 2012, for a loan in the amount of $495,000 from the Texas Water Development Fund to finance wastewater system improvements, utilizing the pre-design funding option.

TRD-201300700
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: February 19, 2013

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Workforce Solutions Brazos Valley Board

Request for Quotes for Child Care Provider Training Services

On February 15, 2013 the Workforce Solutions Brazos Valley Board released a Request for Quotes (RFQ) for Child Care Provider Training Services. Workforce Solutions Brazos Valley Board (WSBVB) is the Local Workforce Development Board for the Brazos Valley Region. WSBVB is soliciting quotes for Speakers/Presenters to present training sessions during a Child Care Conference to be held April 19 and 20, 2013 at The Center for Regional Services in Bryan, Texas. These services are provided to local Child Care Providers with a Child Care Services agreement.

To view and download the RFQ go to www.bvjobs.org. The contact person for this procurement is Program Specialist, Jessica Lockhart, (979) 595-2800, or email jessica.lockhart@bvcog.org. Difficulties downloading the RFQ document should be referred to Jessica Lockhart.

ISSUE DATE: February 15, 2013

RESPONSE DEADLINE: March 13, 2013

Questions concerning this RFQ must be submitted in writing to Jessica Lockhart at jessica.lockhart@bvcog.org or faxed to Jessica Lockhart's attention at (979) 595-2810. No questions will be accepted after March 7, 2013. Answers to submitted questions will be posted on the Board's website at www.bvjobs.org.

WSBVB reserves the right to accept or reject any or all applications received or to cancel or extend, in part or its entirety, this request for proposal.

Workforce Solutions Brazos Valley is an equal opportunity employer and provides equal opportunity programs and services. Auxiliary aids are available upon request to disabled individuals. Texas Relay (800) 735-2989, TDD (800) 735-2988 Voice, TTY (979) 595-2819.

TRD-201300618
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley Board
Filed: February 13, 2013

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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)*