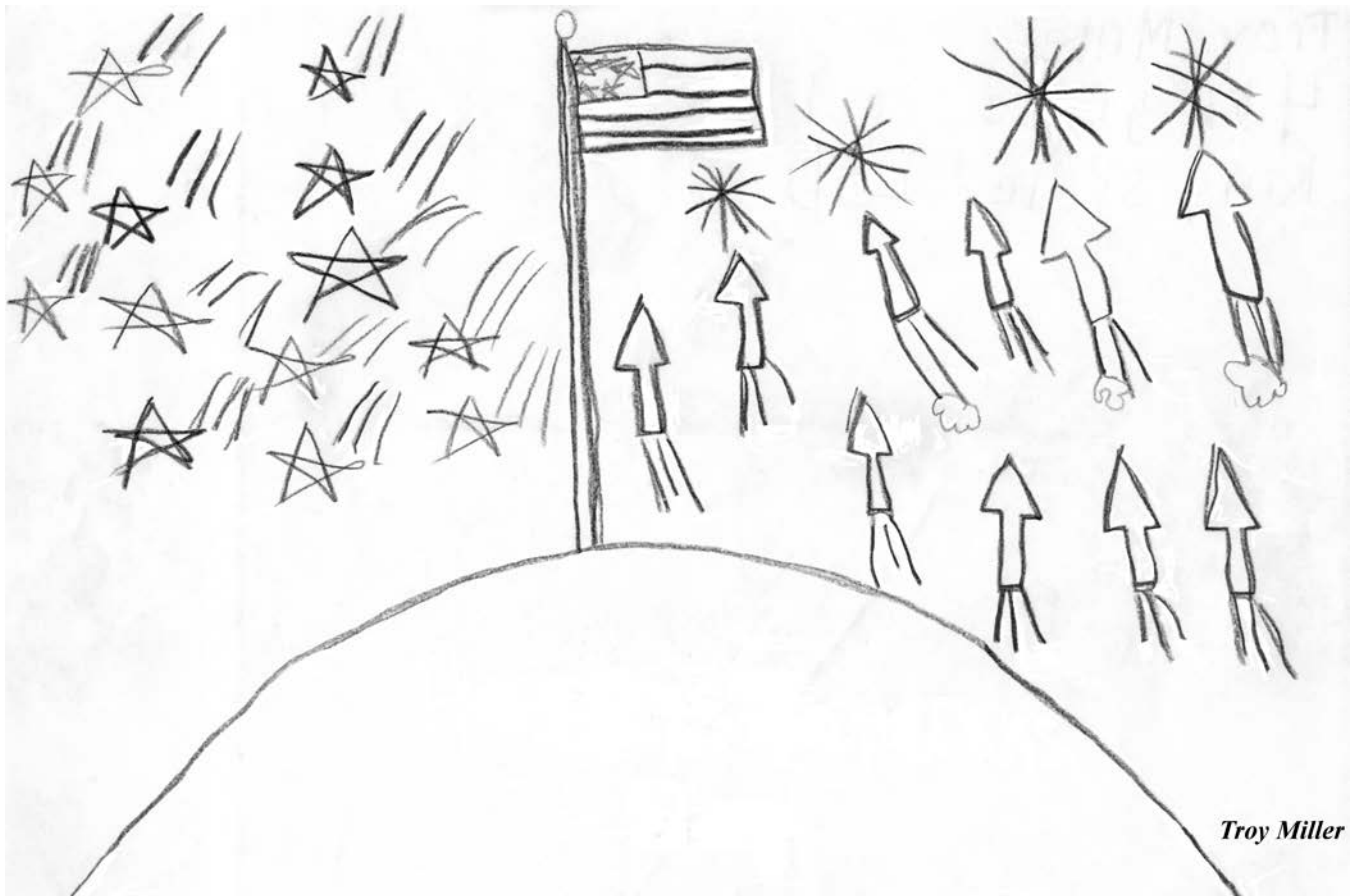

TEXAS REGISTER

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PROPOSED RULES

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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER M. INTERCEPT OF INSURANCE CLAIMS

1 TAC §§55.601 - 55.605

The Office of the Attorney General, Child Support Division, proposes amendments to §§55.601 - 55.605, regarding insurance reporting and intercept pursuant to Texas Family Code §231.015. The proposed amendments are revised to comply with statutory changes by the 82nd legislative session and to clarify the scope provisions, the child support lien reporting data match options, and the automated data match process, interactive lookup options, the protection from liability, and the remittance of funds.

Alicia G. Key, Deputy Attorney General for the Child Support Division, 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 proposed amendments.

Ms. Key has also determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the proposed amendments will be the clarification of the process for intercept of insurance claims under Family Code §231.015. The proposed amendments merely implement a statutorily required program and do not have an effect on small businesses and impose no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposed amendments should be submitted to John O'Connell, Deputy Director, Legal Counsel Division, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas, 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017. Comments on the proposed amendments must be submitted no later than 30 days from the date of this publication.

The proposed amendments are authorized under Texas Family Code §231.015 (requiring the Title IV-D agency by rule to operate an insurance intercept program) and by §231.003, which authorizes the Title IV-D agency to by rule promulgate procedures for the implementation of Chapter 231.

The proposed amendments implement Texas Family Code §231.015.

§55.601. *Scope.*

(a) Under Texas Family Code §231.015, [Section 231.015 of the Family Code requires] the Child Support Division (CSD) of the Office of the Attorney General, in consultation with the Texas Department of Insurance and representatives of the insurance industry, is required to operate by rule a program under which insurers must [whereby an insurer shall] cooperate with the CSD [Child Support Division] in matching the names of [insurantee] claimants with the names of child support obligors who owe past-due child support. When such an individual is identified, the insurer [Child Support Division] will receive either a notice of [file a] child support lien or an income withholding order [on the claim] to secure the payment of the amount of past-due support. This subchapter explains how the matching process and the reporting [lien] process work.

(b) Except as provided by subsection (c) of this section, as [As] used in this subchapter, a "claim" that must be matched and must be reported is any which seeks an economic benefit for the claimant. ["claims" to be reported are claims involving personal injury, personal damages, workers' compensation, wrongful or accidental death, and claims by life insurance beneficiaries. Claims involving only property damage or payment of actual medical costs need not be reported.]

(1) An "economic benefit" under a life, accident, health policy or annuity is defined as a payment in which an individual is paid as the payee or co-payee:

(A) for a claim by a beneficiary under a life insurance policy;

(B) for the cash surrender value by an owner of a life insurance policy or annuity;

(C) for payments to an annuitant; or

(D) a payment to an individual as the payee or co-payee on a first party claim as defined herein, unless excluded under subsection (c)(2) of this section.

(2) An "economic benefit" under a property and casualty insurance policy is defined as a payment involving:

(A) a payment to an individual as the payee or co-payee on a first party claim as defined herein, unless excluded under subsection (c)(1) of this section; payments involving third party claims, as defined herein, where the individual would be entitled to compensations from an insured covered by a liability insurance policy or self-insurer including claims covering personal or bodily injury, lost wages, property damage, non-economic tort damages, wrongful death damages, accidental death damages; or

(B) payments involving payments to individuals for employment or workers' compensation benefits covered by an insurance policy or certified self-insurer.

(3) The term "first party claim" shall mean:

(A) a claim that is made by the insured or policyholder under an insurance policy or contract or by a beneficiary named in a life insurance policy or annuity; and

(B) the proceeds must be paid by the insurer directly to the insured or beneficiary.

(4) The term "third party claim" shall mean a claim for bodily injury, property damage or other damages that is brought by third party against an insured that is covered by a liability insurance policy or contract or by a self-insured.

(c) The following economic benefits need not be reported:

(1) "actual property damage" defined as a payment issued to:

(A) and sent directly to a vendor or repair facility for the actual repair or replacement of the damaged property;

(B) the claimant after the claimant presents a final bill or signed invoice from a vendor or repair facility showing payment made by the claimant for repair or replacement of the damaged property in an amount at least as much as the insurance payment; or

(C) the mortgagee or lienholder of the property.

(2) "actual medical expenses" defined as a payment issued to:

(A) and sent directly to a healthcare provider; or

(B) the claimant after the claimant provides proof of the amount actually paid by the claimant to the healthcare provider or providers and the amount is at least as much as the insurance payment; but, does not include any amounts billed but not paid.

(3) A co-payable insurance payment mailed directly to a vendor, repair facility, or healthcare provider that includes the claimant as a co-payee under paragraph (1) or (2) of this subsection.

(4) A loan against the cash value or surrender value of an insurance policy or annuity, including loans for premium payments.

(5) Dividends or other payments made under an insurance policy or annuity that are credited or retained by the insurer or that will not exceed \$1,200 over a 12 month period.

(6) Benefits payable directly to a creditor of a claimant under the terms of the policy.

(7) Benefits assigned to be paid to a healthcare provider or facility for "actual expenses" defined as the amount actually owed by the insured not otherwise paid or reimbursed.

(8) Limited benefits that include coverage for a specified disease or illness; coverage that provides limited scope dental or vision benefits; hospital indemnity or other fixed indemnity insurance coverage; and short-term major medical contracts, that do not exceed \$500 over a 30-day period.

(9) Benefits paid in accordance with a "long term care benefit plan" as defined in §1651.003 of the Insurance Code.

(10) Benefits paid on behalf of an individual directly to a retirement plan.

(d) [(e)] All insurers [doing business in Texas, including, but not limited to domestic, foreign and alien companies, self-insurers, and surplus line insurers,] are subject to the matching and reporting requirements under this subchapter and must match and report any claim, in which: All insurers shall report all claims in which the policy was is-

sued in Texas or in which the claimant resides in Texas and are encouraged to report all claims regardless of the State where the claim arises or is filed. As used in this subchapter, the term "insurers" includes all "agents" and "administrators" employed by or associated with the insurer.]

(1) the beneficiary is making the claim on a life policy or annuity that was delivered to an individual or group policyholder located or residing in Texas;

(2) the beneficiary making a claim on a life policy or annuity resides in Texas;

(3) a first party claimant making a claim resides in Texas;

(4) a third party claimant making a third party claim, as defined in subsection (b)(4) of this section, resides in Texas; or

(5) the liability insurer providing coverage to an insured on a third party claim is licensed or is an eligible surplus lines insurer authorized to provide liability insurance in Texas.

(e) For a claim under subsection (d)(4) or (5) of this section, the liability insurer shall comply with the match and reporting requirements if coverage to an insured would result in payments to the third party claimant as a child support obligor based on the liability of the insured to the third party claimant.

(f) To determine whether a recipient of funds paid under a claim owes child support arrearages or is subject to a lien for child support arrearages, insurers are encouraged to report all claims.

(g) As used in this subchapter, "insurer" means:

(1) a domestic, foreign, or alien company which provides insurance coverage of any kind, including:

(A) life insurance;

(B) health insurance;

(C) liability insurance for an occurrence;

(D) an annuity; or

(E) any combination of subparagraphs (A) - (D) of this paragraph.

(2) a Lloyd's plan;

(3) a reciprocal or interinsurance exchange;

(4) a fraternal benefit society;

(5) a mutual aid association, including a mutual insurance company;

(6) a surplus lines insurer;

(7) a certified self-insurer granted a certificate of authority as authorized by Labor Code Chapter 407;

(8) a certified self-insurer group granted a certificate of approval as authorized by Labor Code Chapter 407A; or

(9) a governmental entity that self-insures, either individually or collectively under an interlocal cooperation contract as authorized by Government Code Chapter 791.

(h) To assure the flexibility to accommodate the various types of operations of the entities subject to this subchapter, this subchapter will be given its most reasonable meaning taken in its total context.

(i) If compliance with this subchapter results in an operational hardship or an injustice to any party, this subchapter may be suspended at the discretion of the Title IV-D Director.

(j) The Title IV-D Director may delegate a power, duty, or responsibility under this subchapter to one or more persons in the Child Support Division.

§55.602. Child Support Lien Matching [Network].

(a) The CSD [Office of the Attorney General] has contracted [contracts] with the State of Rhode Island and Providence Plantations to participate in the Child Support Lien Network (CSLN). CSLN provides an insurer with two methods of matching: an Automated Data Match, or an Interactive Lookup. An insurer subject to the requirements of this subchapter [this matching process] may choose to provide or obtain matching information using either or both the CSLN Automated Data Match process and [or] the CSLN Interactive Lookup.

(b) As an alternative to an automated data match with CSLN, an insurer can participate in a similar automated data match with the federal Office of Child Support Enforcement (OCSE). An insurer may obtain information about the OCSE match program, including enrollment in it, by going to the OCSE website at <http://www.acf.hhs.gov/programs/cse/> and opening "Insurance Match Program" under "Federal/State Systems" on the website's main page or the insurer may access the program directly at insurance-match@afc.hhs.gov. An insurer or agent of an insurer participating in OCSE's automated, data match process may either submit information on claims to OCSE or receive a file from OCSE containing information about individuals who owe past-due support (delinquent obligor information) and generate a match file to OCSE.

§55.603. Automated Data Match.

(a) An insurer can conduct an automatic data match [electronic interface] of its pending claims against a [the] list of delinquent child support obligors maintained by the [through] Insurance Service Office (ISO). ISO is an industry service provider, located [headquartered] in New Jersey, which provides [maintains] a claim search service [system] to assist subscribing insurers in fraud detection. ISO can be contacted by email at njsupport@iso.com.

(b) An insurer participating in the automated data matching process must give ISO permission to match the insurer's [its] claim data with CSLN or OCSE. [ISO may be contacted by email at njsupport@iso.com.]

(c) CSLN matches its list of child support obligors daily against the ISO claim data. ISO returns matches to OCSE to distribute to the State child support agency(ies) responsible for collecting past-due support.

(d) A participating insurer will receive a notice of child support lien (or withholding instrument for a workers' compensation claim) only on those claims that the insurer has registered with ISO and that match the name of an obligor who owes past-due child support. Claims information that does not match individuals who owe past-due support is discarded.

§55.604. Interactive Lookup.

(a) By accessing the CSLN data base an [An] insurer may determine whether a claimant owes past-due child support. [check the name of an individual insurance claimant to see if there are outstanding child support obligations by accessing the CSLN database of child support obligors.]

(b) To register for access to this database, an insurer must:

(1) go to the CSLN [Child Support Lien Network] web page at www.childsupportliens.com [<http://www.childsupportliens.com/>];

(2) click on the FAQ tab at the top of the web page and select the question regarding registration;

(3) complete and electronically submit the registration form and confidentiality statement.

(c) Secure access to the CSLN database will be approved once [Once] the [insurer] registration information and confidentiality statement have [has] been received and reviewed. [secure access to the database of child support obligors will be approved.] The insurer will be notified by [via] e-mail of access approval and at that time will be provided with a [This notice will include the] user ID [that has been assigned], the web site address, and basic instructions.

(d) Unless the insurer is participating in the CSLN or OCSE Automated Data Match, the insurer must [should] query the database prior to the payment of the claim. [CSLN database of child support obligors as early as possible in the claims process; and shall query the CSLN database not later than 15 days before a claim is paid.]

(1) For claims involving periodic payments after the insurer has determined that benefits will be payable, the query must be made only prior to the initial payment after the insurer has determined that benefits are payable. No inquiry is required for each periodic payment thereafter. Examples of these types of claims would include:

(A) periodic payments under a disability policy;

(B) workers' compensation policy;

(C) accident or health insurance policy involving periodic payments; or

(D) payments to an annuitant for an annuitization.

(2) If additional information is required to be submitted to continue periodic payments, this shall not be considered a new claim if the information is provided within one (1) year after the initial determination is made by the insurer.

(3) A claim involving different benefits or coverage's will be considered a new claim and the data base must be queried.

(e) The insurer receives immediate notification of the status of the match:[-]

(1) if [H] there is no match, the insurer is informed:[-]

(2) if [H] there is a positive match, the insurer is informed and provided the basic match data:[-]

(3) if [H] there are multiple possible matches within one state, the insurer is asked to call CSLN to identify the correct obligor; and[-]

(4) if [H] there are multiple possible matches within more than one state, the insurer is notified that CSLN will work with the insurer and the affected states to determine the appropriate course of action.

(f) When an interactive match occurs, CSLN notifies the State child support enforcement agency of a match. CSLN or the [The] State child support agency will send a notice of child support lien (or, in the case of workers' compensations claim, a withholding instrument) to the insurer.

(g) As an alternative to CSLN, a life insurance company can use OCSE's web-based application, the Debt Inquiry Service (DIS), to submit information about life insurance beneficiaries prior to making a payout to determine if a beneficiary owes past-due support. The information may be provided through individual look-ups or by uploading a single file containing information about multiple individuals. The information provided by the life insurance companies is compared with individuals who owe past-due child support. If there is a match, the life insurance company receives the name of the State(s) where the individ-

ual owes past-due support and contact information for that State. If the match identifies an individual subject to a child support order being enforced by the CSD, the life insurance company may either contact the CSD or await notice from the CSD concerning the match.

(h) Apart from life insurance claims, the OCSE Debt Inquiry Services portal does not provide enough information to satisfy the insurance data match requirements under this subchapter.

§55.605. Protection from Liability; Remittance of Funds.

(a) An insurer that provides information required by this subchapter or acts in good faith to comply with procedures established by the CSD for the operation of the program under this subchapter, including the remittance of funds as specified under this rule, or [or otherwise] responds to a notice of child support lien or levy under Texas Family Code Chapter 157, Subchapter G, [Subchapter G, Chapter 157, or acts in good faith to comply with procedures established in the program under §231.015] is not liable for those acts under any law to any person; including, but not limited to, any claims asserted under Chapter 541, [or] Chapter 542, Chapter 601, or Chapter 602 of the Insurance Code; Chapter 17 of the Business and Commerce Code; Chapter 181 of the Health and Safety Code; or, an action for common law bad faith. However, an insurer who fails to comply with a child support lien, including the remittance of funds as specified under this rule, may be liable to the CSD as the child support lien claimant in an amount equal to the amount of funds payable under an insurance claim, not to exceed the amount of the child support arrearages for which the lien was issued. (See Texas Family Code §157.324.) An insurer who has questions or concerns about a child support lien, including the appropriate remittance of funds under a policy to which the lien attaches, must contact the Texas Special Collections Unit, P.O. Box 12027, Austin, Texas 78711-2027, before paying out any funds under the policy.

(b) An insurer should remit funds in satisfaction of a child support lien in one of the following ways:

(1) On [is not liable, upon] receipt of a signed agreement [made] between the CSD [Child Support Division of the Office of the Attorney General] and a claimant and/or claimant's attorney, [if] the insurer should remit [remits] the funds agreed to be paid to satisfy the child support lien to: Texas State Disbursement Unit, Insurance Intercept, P.O. Box 245996, San Antonio, Texas 78224-5996. The funds should be made [with the remittance] payable to the Office of the Attorney General, and the remittance should identify [documentation submitted includes] the name of the claimant/obligor and the CSD's [IV-D] case number(s) as shown on the Notice of Lien.

(2) If the claimant is represented by an attorney but the insurer has not received a copy of any signed agreement between the attorney and the CSD, the insurer should remit all the funds directly to the claimant's attorney and must include the Office of the Attorney General as a co-payee and provide the Office of the Attorney General with written notice of the data and amount of the payment sent to the attorney.

(3) If the claimant has no attorney and the insurer has not received a copy of any signed agreement between the claimant and the CSD, the insurer must remit all the funds to the Texas State Disbursement Unit, Insurance Intercept, P.O. Box 245996, San Antonio, Texas 78224-5996 with the funds being made payable to both the Office of the Attorney General and the claimant and the remittance providing the name of the claimant/obligor and the CSD's case number(s) as shown on the Notice of Lien.

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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Katherine Cary
General Counsel

Office of the Attorney General

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For further information, please call: (512) 936-1180

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TITLE 7. BANKING AND SECURITIES

PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 76. MISCELLANEOUS SUBCHAPTER A. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS AND RESERVES

7 TAC §76.4

The Finance Commission of Texas proposes an amendment to 7 TAC Chapter 76, Subchapter A, §76.4, concerning Financial Statements; Annual Reports; Audits.

In general, the purpose of the amendment is to implement statutory changes made by the 83rd Legislative Session to the rules relating to state savings banks.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering this rule.

Commissioner Foster has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the proposed amendment will be clarification and implementation of the statute. There will be no effect on individuals required to comply with the amendment as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendment may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705; or by email to sm-linfo@sml.texas.gov within 30 days of this publication in the *Texas Register*.

The amendment is proposed under Finance Code, §11.302 and §92.201, which grants rulemaking authority to the Finance Commission of Texas.

The statutory provisions affected by the proposed amendment are contained in Finance Code, Chapters 91, 92, 93, 96 and 97.

§76.4. Financial Statements; Annual Reports; Audits.

{(a) Before March 1 of each year, each savings bank shall submit a statement of condition (balance sheet) as of the last business day of December of the preceding year to the commissioner, upon a form to be prescribed and furnished by the commissioner.}

(a) [(b)] For safety and soundness purposes, within 90 days of its fiscal year end, each savings bank is required to have an independent audit of its financial statements. The audit is to be performed in accor-

dance with generally accepted auditing standards and the provisions of 12 Code of Federal Regulations Part 363 Federal Deposit Insurance Corporation Regulations regarding annual independent audits and reporting requirements are incorporated herein, with the exception of any matters specifically addressed by the Act or its related rules.

(b) [(e)] A copy of the independent audit and all correspondence reasonably related to the audit shall be provided to the Commissioner upon completion.

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §77.72, §77.74

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

The Finance Commission of Texas (the Commission) proposes the repeal of 7 TAC Chapter 77, Subchapter A, §77.72, concerning Liquidity; and §77.74, concerning Local Service Area Investment Requirement.

In general, the purpose of the repeal is to implement statutory changes made by the 83rd Legislative Session to the rules relating to state savings banks.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state government or for local government as a result of repealing these rules.

Commissioner Foster has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the proposed repeal will be clarification and implementation of the statute. There will be no effect on individuals required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed repeal may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705; or by email to smlinfo@sml.texas.gov within 30 days of this publication in the *Texas Register*.

The repeal is proposed under Finance Code, §11.302, which grants rulemaking authority to the Finance Commission of Texas.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 95.

§77.72. *Liquidity.*

§77.74. *Local Service Area Investment Requirement.*

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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Caroline C. Jones

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CHAPTER 80. RESIDENTIAL MORTGAGE LOAN COMPANIES

The Finance Commission of Texas proposes amendments to 7 TAC Chapter 80, §80.1, concerning Scope; §80.2, concerning Definitions; §80.100, concerning Licensing - General; §80.103, concerning License Record Changes; §80.106, concerning Renewals; §80.107, concerning Fees; §80.200, concerning Required Disclosures; §80.202, concerning Prohibition on False, Misleading or Deceptive Practices and Improper Dealings; §80.203, concerning Advertising; §80.204, concerning Books and Records; §80.205, concerning Mortgage Call Reports; and §80.301, concerning Complaints, Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions.

In general, the purpose of the proposed amendments is to implement statutory changes made by the 83rd Legislative Session.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Foster has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the proposed amendments will be clarification and implementation of the statute. There will be no effect on individuals required to comply with the rules as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705; or by email to smlinfo@sml.texas.gov within 30 days of this publication in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §80.1, §80.2

The amendments are proposed under Finance Code, §156.102, which grants rulemaking authority to the Finance Commission of Texas.

The statutory provisions affected by the proposed amendments are contained in Finance Code, Chapters 156 and 180.

§80.1. *Scope.*

This chapter governs the licensing, registration, and conduct of ~~[Residential Mortgage Loan Originators,]~~ Mortgage Companies, Financial Services Companies, Credit Union Subsidiary Organizations, Auxiliary Mortgage Loan Activity Companies, and Independent Contractor Loan Processors and Underwriters under Finance Code, Chapter 156. This chapter also governs the conduct of Residential Mortgage Loan Originators who are subject to or engage in regulated activities under Finance Code, Chapter 156 and Chapter 180, [the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 ("SAFE Act"),] except for individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code, §180.251(c). The terms "licensed" and "registered" may be used interchangeably.

§80.2. *Definitions.*

As used in this chapter, the following terms have the meanings indicated:

(1) "Branch Office" means any office that is separate and distinct from the company's headquarters location, whether located in Texas or not, which conducts mortgage business on residential real estate located in the state of Texas.

(2) "Commissioner's designee" means an employee of the department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 156.

(3) "Company" means, for purposes of this chapter, a residential mortgage loan company, as that term is defined in Finance Code, §156.002.

(4) "Control Person" means an individual that directly or indirectly exercises control over a company. Control is defined by the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that:

(A) is a director, general partner or executive officer;

(B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(C) in the case of an LLC, managing member; or

(D) in the case of a partnership, has the right to receive upon dissolution, or had contributed, 10% or more of the capital, is presumed to control that company.

~~[(5) " Dwelling" has the meaning assigned by, §103(v) of the Truth in Lending Act (15 U.S.C. §1602(v)).]~~

(5) ~~[(6)]~~ "One-to-four family residential real property" means improved or unimproved real property, or any portion of or interest in any such real property, on which a one-to-four family dwelling, including a manufactured home, is being or is to be constructed or situated.

~~[(7) "Originator" means, for purposes of this chapter, a residential mortgage loan originator, as that term is defined in Finance Code, §180.002.]~~

(6) ~~[(8)]~~ "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective no-

tice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

(7) ~~[(9)]~~ "Qualifying Individual" shall have the same meaning as that provided in Finance Code, §156.002. Additionally, the license held by the qualifying individual must be held in a status, which authorizes them to conduct regulated activities, and is sponsored by the company for which they are the qualifying individual.

(8) ~~[(10)]~~ "Residential Mortgage Loan" shall have the same meaning as that provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1297



SUBCHAPTER B. LICENSING

7 TAC §§80.100, 80.103, 80.106, 80.107

The amendments are proposed under Finance Code, §156.102, which grants rulemaking authority to the Finance Commission of Texas.

The statutory provision affected by the proposed amendments are contained in Finance Code, Chapters 156 and 180.

§80.100. *Licensing - General.*

(a) A person is required to be licensed under Finance Code, Chapter 156 if the person:

(1) Engages in the business of residential mortgage loan origination on real property located in the state of Texas;

(2) Represents or holds himself out to the public as a "loan officer," "mortgage consultant," "mortgage broker," "loan modification/refinance consultant," or "residential mortgage loan originator," or otherwise represents that the individual can or will perform the activities of a residential mortgage loan originator;

(3) Provides disclosures to a prospective borrower or discusses or explains such disclosures. Disclosures include but are not limited to the residential mortgage loan originator disclosure form; truth in lending disclosures, the good faith estimate of settlement costs, affiliated business arrangements; and disclosures relating to the dual

role as a residential mortgage loan originator and real estate broker or sales agent. An individual who prepares a required disclosure under the direction and supervision of a licensed residential mortgage loan originator, but who does not discuss the disclosure with a prospective borrower shall not be deemed to have provided a disclosure for purposes of this paragraph;

(4) Determines the lender(s) or investor(s) to whom the loan will be submitted;

(5) Issues or signs a prequalification letter or preapproval letter; or

(6) Is a loan processor or underwriter who is an independent contractor.

(b) Applications for a company or an originator license must be submitted through the Nationwide Mortgage Licensing System and Registry and must be on the prescribed application forms.

(c) An application, notice, or any other filing with the department will only be deemed submitted if it is complete. A filing is complete only if all required supporting documentation is included and only if all required fees have been received by the department. The application may be deemed withdrawn if an applicant fails to provide to the department, within 30 days from the date of request, any information or supplemental documentation.

(d) An applicant may be issued a license in an inactive status if the applicant completes the required application form and complies with all requirements of licensure except for the requirement of an approved sponsorship. Upon submission and approval of a sponsorship, the license may be changed to active status.

(e) The department is limited to those specific license and registration status codes available through the Nationwide Mortgage Licensing System and Registry. The Nationwide Mortgage Licensing System and Registry maintains a website that contains the specific status codes available and their definitions. The available status codes changed by the department are reflected in the licensee's record on the Nationwide Mortgage Licensing System and Registry and on the Nationwide Mortgage Licensing System and Registry Consumer Access website.

(f) The Commissioner may authorize an investigation to be conducted against an originator if there is reasonable cause to suspect or believe that an originator may have been convicted of a criminal offense which may constitute grounds for the suspension or revocation of that originator's license.

(g) The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the issuance of any license pursuant to Finance Code, Chapter 156 as is deemed necessary or advisable to determine that the requirements of Finance Code, Chapter 156 have been met.

(h) The Commissioner or the Commissioner's designee may at their discretion, after reviewing the circumstances of each situation, issue a license on a conditional basis.

§80.103. License Record Changes.

(a) ~~[Each originator's application for a license under Finance Code, Chapter 156 requires the applicant to indicate the location(s) at which he or she proposes to conduct licensed activity.]~~ Proper sponsorship and disclosure of each location at which an originator is conducting regulated activities is required to be on their Nationwide Mortgage Licensing System and Registry record.

(b) A licensee shall notify the Commissioner by filing a license amendment through the Nationwide Mortgage Licensing System and Registry of the following:

(1) any change of address;

(2) ~~[personal]~~ name change; or

(3) a new, or changed company, organization, or assumed name.

§80.106. Renewals.

(a) A license may be renewed upon:

(1) submission of a completed application for renewal through the Nationwide Mortgage Licensing System and Registry together with the payment of the applicable renewal application fee; and

(2) determination that the applicant continues to meet the minimum requirements for license issuance. ~~[; and]~~

~~[(3) providing satisfactory evidence to the Commissioner that the license holder has completed the continuing education requirements of Finance Code, §180.060.]~~

(b) Renewal of a license may be denied for reasons provided in Finance Code, §156.208.

~~[(c) For service members on active military duty, as detailed in Occupations Code, Chapter 55, the department will comply with the requirements as set out in that statute.]~~

(c) ~~[(d)]~~ The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the renewal of any license pursuant to Finance Code, Chapter 156 as is deemed necessary or advisable to determine compliance with the requirements of Finance Code, Chapter 156.

§80.107. Fees.

(a) Fees relating to a license or registration shall be established by the Commissioner in accordance with Finance Code, Chapter 156. The amount of the fees may be modified upon not less than 30 days advance notice posted on the department's website.

(b) All fees are nonrefundable and nontransferable.

(c) The Commissioner may, in addition to any disciplinary action, collect a fee in an amount not to exceed \$50 for any returned check or credit card chargeback.

(d) For examinations that are conducted out of state, the Commissioner may collect reimbursement of actual expenses. Actual expenses incurred will be in compliance with department's policies and procedures.

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

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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1297



SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§80.200, 80.202 - 80.205

The amendments are proposed under Finance Code, §156.102, which grants rulemaking authority to the Finance Commission of Texas.

The statutory provisions affected by the proposed amendments are contained in Finance Code, Chapters 156 and 180.

§80.200. *Required Disclosures.*

(a) An originator sponsored under Finance Code, Chapter 156 shall include the following notice, Figure: 7 TAC §80.200(a), to a residential mortgage loan applicant with an initial application for a residential mortgage loan:

Figure: 7 TAC §80.200(a)

(b) At each physical office, and on its website, a company or an originator shall conspicuously post the following notice:

Figure: 7 TAC §80.200(b) (No change.)

(c) A notice is deemed to be conspicuously posted under subsection (b) of this section if a customer with 20/20 vision can read it from each place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted. If applicable a notice is deemed conspicuously posted if prominently displayed on the website.

§80.202. *Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.*

(a) No company or originator may:

(1) knowingly misrepresent his or her relationship to a mortgage applicant or any other party to an actual or proposed residential mortgage loan transaction;

(2) knowingly misrepresent or understate any cost, fee, interest rate, or other expense in connection with a mortgage applicant's applying for or obtaining a residential mortgage loan;

(3) disparage any source or potential source of residential mortgage loan funds in a manner which knowingly disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly participate in or permit the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a residential mortgage loan;

(5) as provided for by the Real Estate Settlement Procedures Act and its implementing regulations, broker, arrange, or make a residential mortgage loan in which the company or originator retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommend or encourage default or delinquency or continuation of an existing default or delinquency by a mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(7) induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan;

(8) alter any document produced or issued by the department, unless otherwise permitted by statutory regulation; or

(9) engage in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

(b) The term "improper dealings" in Finance Code, §156.303(a)(3) includes, but is not limited to the following:

(1) Acting negligently in performing an act for which a person is required under Finance Code, Chapter 156 to hold a license;

(2) Violating any provision of a local, State of Texas, or federal, constitution, statute, rule, ordinance, regulation, or final court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of Finance Code, Chapter 156 or this chapter including, but not limited to, the following:

(A) Real Estate Settlement Procedures Act[; 42 U.S.C. Chapter 2600];

(B) Regulation X[; 24 C.F.R. Part 3500];

(C) Consumer Credit Protection Act, [45 U.S.C. Chapter 1600(]Truth in Lending Act[)];

(D) Regulation Z[; 42 C.F.R. Part 226];

(E) Equal Credit Opportunity Act[; 45 U.S.C. §1691];

(F) Regulation B[; 42 C.F.R. Part 202]; and

(G) Texas Constitution, Article XVI, §50.

(3) Representing to a mortgage applicant that a charge or fee which is payable to the company or originator is a "discount point" unless the loan closes and:

(A) The company or originator is the lender in the transaction. For purposes of this paragraph, the company or originator is deemed to be the lender if the company or originator, is the payee as evidenced on the face of the note or other written evidence of indebtedness; or

(B) The company or originator, is not the lender, but demonstrates by clear and convincing evidence that the lender has charged or collected discount point(s) or other fees which the company or originator has remitted to the lender on behalf of the mortgage applicant, to buy down the interest rate on a residential mortgage loan.

(C) A company or an originator engages in a false, misleading or deceptive practice or improper dealings when in connection with the origination of a residential mortgage loan:

(i) The company or originator offers other goods or services to a consumer in a separate but related transaction and the company or originator engages in a false misleading or deceptive practice in the related transaction; or

(ii) The sponsor of an originator who offers other goods or services to a consumer in a separate but related transaction and the person engages in a false, misleading or deceptive practice in the related transaction; and the sponsor knew or should have known of the transaction.

(D) An originator receiving a verbal or written inquiry about his or her services shall respond accurately to any questions about the scope and nature of such services and any costs.

§80.203. *Advertising.*

(a) Licensees who advertise rates, terms, or conditions must comply with the disclosure requirements of [42 C.F.R. §226.24 (]Regulation Z[)].

(b) Any advertisement of residential mortgage loans which are offered by or through a mortgage company [banker] or originator shall conform to the following requirements:

(1) An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations.

(2) Except as provided in subsection (c) of this section, if the person who caused the advertisement to be published is an originator the advertisement shall contain:

(A) the name of the originator followed by the phrase "Residential Mortgage Loan Originator";

(B) the originator's Nationwide Mortgage Licensing System and Registry identification number;

(C) the name of the company, as designated in the records of the Commissioner as of the date of the advertisement, through or for whom the originator conducts the advertised mortgage origination activities; and

(D) the company's physical office or branch office street address in Texas.

(3) An advertisement shall not make any statement or omit to make any statement the result of which is to present a misleading or deceptive impression to consumers.

(4) An advertisement shall otherwise comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a credit transaction. However, the requirements of subsection (b)(2) of this section shall not apply to:

(1) any advertisement which indirectly promotes a credit transaction and which contains only the name of the company or originator and does not contain any contact information, such as the inscription of the name on a coffee mug, pencil, youth league jersey, or other promotional item; or

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers.

§80.204. Books and Records.

(a) In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 156 and this chapter, each company or originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each company or originator is required to maintain, at the location specified in their official record on file with the department, the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received the residential mortgage loan file shall contain at a minimum the following:

(A) a copy of the initial signed and dated residential mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement, documentation of the timely denial, or other disposition of the application for a residential mortgage loan;

(C) a copy of the signed and dated disclosure statement required by Finance Code, Chapter 156 and §80.200(a) of this chapter;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to applicants required by Finance Code, §343.105; and

(F) a copy of the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet; if applicable.

(2) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) name of each mortgage applicant and how to contact them;

(B) date of the initial residential mortgage loan application;

(C) description of the disposition of the application for a residential mortgage loan;

(D) identity of the person or entity who initially funded and/or acquired the residential mortgage loan [~~and information as to how to contact them~~]; and

(E) full name of the originator and their Nationwide Mortgage Licensing System and Registry identification number.

(3) General Business Records. General business records include the following:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the mortgage lending [~~brokerage~~] business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all company employees, independent contractors and all others compensated by such originator in connection with the mortgage lending business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to mortgage lending services including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(c) A company and/or originator shall maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) A company and/or originator shall maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) All books and records required by this section shall be maintained in good order and shall be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may be grounds for suspension or revocation of a license.

(f) All books and records required by this section shall be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) An originator may meet applicable recordkeeping requirements if his or her sponsoring company maintains the required records.

(h) Upon termination of operations, the licensee shall notify the Commissioner, in writing, within ten days where the required records will be maintained for the prescribed periods. If such records are transferred to another licensee the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Commissioner.

§80.205. Mortgage Call Reports.

(a) Call Report.

(1) A company shall file a mortgage call report on a quarterly basis. The filing deadlines are set by the Nationwide Mortgage Licensing System and Registry.

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

(3) The call report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(b) Statement of Condition Report.

(1) A company shall file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(c) Submission of a call report or statement of condition report, by a company, satisfies the requirements of an originator under Finance Code, §180.101 for the period of sponsorship, provided that the originator's information is included in the report.

(d) Failure to file a mortgage call report or a statement of condition report ~~may [ean]~~ result in ~~[an]~~ administrative action ~~[penalty for each missed or late filing]~~.

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1297



SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §80.301

The amendments are proposed under Finance Code, §156.102, which grants rulemaking authority to the Finance Commission of Texas.

The statutory provision affected by the proposed amendments are contained in Finance Code, Chapters 156 and 180.

§80.301. Complaints, Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions.

(a) Upon receipt of a written complaint alleging acts or omissions of a person₂ as defined in Finance Code, §180.002(14)₂ required to be licensed under Finance Code, Chapter 156, the Commissioner or the Commissioner's designee will make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation:

(1) if it has been determined that the complaint warrants an investigation, advise all parties who are subject of the complaint by written notice that a complaint has been filed and an investigation will be conducted. The investigation will be conducted as is deemed appropriate in light of all the relevant facts and circumstance then known. Such investigation may include any or all of the following:

(A) review of documentary evidence;

(B) interviews with complainants, licensees, and third parties;

(C) obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies; and

(D) other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.

(2) if determined that a complaint does not warrant investigation, advise the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered, and close the file.

(b) The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 156 and this chapter.

(c) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 156.

(d) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable, including documentary or other ev-

idence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 156.

(e) A complaint which names a company or sponsored originator as the subject of the complaint is also a complaint against the qualifying individual at the time of any alleged violation. The qualifying individual of a company is responsible for all acts and conduct performed by or through the company and is required to fulfill his or her professional responsibility to the Commissioner and members of the public.

(f) If the Commissioner determines that a person has violated the requirements of Finance Code, Chapter 156, this chapter, or any order pursuant to Finance Code, Chapter 156 or this chapter, the Commissioner, after notice and opportunity for hearing, may impose an administrative penalty on that person. Such penalties shall not exceed \$25,000 per violation. The amount of the violation is at the Commissioner's discretion. In determining the amount of any administrative penalty(ies) for any violation(s) of Finance Code, Chapter 156 or this chapter, the Commissioner shall consider such factors as required by Finance Code, §156.302.

(g) If the Commissioner has reasonable cause to believe that a licensee has violated or is about to violate Finance Code, Chapter 156, this chapter, or an order issued pursuant to this chapter, the Commissioner may, without notice and hearing, issue an order to cease and desist a particular action or an order to take affirmative action, or both, to enforce compliance with Finance Code, Chapter 156 and this chapter. Any such order must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom an order is made requests a hearing, the Commissioner shall set and give notice of a hearing to be held in accordance with this chapter and Government Code, Chapter 2001. Based on the findings of fact and conclusions of law, the Commissioner may find by order that a violation has or has not occurred.

(h) The Commissioner may, after giving notice and an opportunity for hearing, impose against any person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$1,000 for each day on which the violation is continuing. In addition to any other remedy provided for by law, the Commissioner may institute in District Court for Travis County an action for injunctive relief and/or to collect the administrative penalty. A bond is not required of the Commissioner with respect to any request for injunctive relief under this subsection.

(i) The Commissioner may order disciplinary action after notice and opportunity for hearing against a company or an originator if the Commissioner becomes aware during the term of the license of any fact that would have been grounds for denial of an original license if the fact had been known by the Commissioner on the date the license was issued.

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

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CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN ORIGINATOR REGULATIONS

SUBCHAPTER B. LICENSING

7 TAC §80.101, §80.105

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

The Finance Commission of Texas proposes the repeal of 7 TAC Chapter 80, Subchapter B, §80.101, concerning Education Program; and §80.105, concerning Request for Criminal History Eligibility Determination.

In general, the purpose of the repeal is to implement statutory changes made by the 83rd Legislative Session.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state government or for local government as a result of repealing these rules.

Commissioner Foster has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the proposed repeal will be clarification and implementation of the statute. There will be no effect on individuals required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed repeal may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705; or by email to smlinfo@sml.texas.gov within 30 days of this publication in the *Texas Register*.

The repeal is proposed under Finance Code, §156.102, which grants rulemaking authority to the Finance Commission of Texas.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapters 156 and 180.

§80.101. Education Program.

§80.105. Request for Criminal History Eligibility Determination.

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

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CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

The Finance Commission of Texas (the Commission) proposes amendments to 7 TAC Chapter 81, §81.1, concerning Scope; §81.2, concerning Definitions; §81.100, concerning Licensing - General; §81.105, concerning Fees; §81.200, concerning Required Disclosures; §81.202, concerning Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings; §81.203, concerning Advertising; and §81.205, concerning Mortgage Call Reports.

In general, the purpose of the proposed amendments is to implement statutory changes made by the 83rd Legislative Session.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Foster has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the proposed amendments will be clarification and implementation of the statute. There will be no effect on individuals required to comply with the rules as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705; or by email to sm-linfo@sml.texas.gov within 30 days of this publication in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §81.1, §81.2

The amendments are proposed under Finance Code, §157.011, which grants rulemaking authority to the Finance Commission of Texas.

The statutory provisions affected by the proposed amendments are contained in Finance Code, Chapters 157 and 180.

§81.1. Scope.

This chapter governs the licensing, registration, and conduct of residential mortgage loan originators and mortgage bankers under Finance Code, Chapter 157 and Chapter 180, [~~the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 ("SAFE Act")~~] except for individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code, §180.251(c). The terms "licensed" and "registered" may be used interchangeably.

§81.2. Definitions.

As used in this chapter, the following terms have the meanings indicated:

(1) "Commissioner's designee" means an employee of the department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 157.

(2) "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or

(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.

(3) "Department" means the Texas Department of Savings and Mortgage Lending.

(4) "Mortgage banker" shall have the same meaning as that provided in Finance Code, §157.002.

~~[(5) "Originator" means, for purposes of this chapter, a Residential Mortgage Loan Originator, as that term is defined in Finance Code, §180.002.]~~

(5) ~~[(6)]~~ "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of an originator need not be the location at which such originator's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for examination during normal business hours.

(6) ~~[(7)]~~ "Residential mortgage loan" shall have the same meaning as that provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

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

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SUBCHAPTER B. LICENSING

7 TAC §81.100, §81.105

The amendments are proposed under Finance Code, §157.011, which grants rulemaking authority to the Finance Commission of Texas.

The statutory provision affected by the proposed amendments are contained in Finance Code, Chapters 157 and 180.

§81.100. Licensing - General.

(a) An individual is required to be licensed under Finance Code, Chapter 157 if the individual:

(1) Engages in the business of residential mortgage loan origination on real property located in the state of Texas;

(2) Represents or holds himself out to the public as a "loan officer," "mortgage consultant," "mortgage broker," "loan modification/refinance consultant," or "residential mortgage loan originator," or otherwise represents that the individual can or will perform the activities of a residential mortgage loan originator;

(3) Provides disclosures to a prospective borrower or discusses or explains such disclosures. Disclosures include but are not limited to the residential mortgage loan originator disclosure form; truth in lending disclosures, the good faith estimate of settlement costs, affiliated business arrangements; and disclosures relating to the dual role as a residential mortgage loan originator and real estate broker or sales agent. An individual who prepares a required disclosure under the direction and supervision of a licensed residential mortgage loan originator, but who does not discuss the disclosure with a prospective borrower shall not be deemed to have provided a disclosure for purposes of this paragraph;

(4) Determines the lender(s) or investor(s) to whom the loan will be submitted;

(5) Issues or signs a prequalification letter or preapproval letter; or

(6) Is a loan processor or underwriter who is an independent contractor.

(b) Applications for a company registration or an originator license must be submitted through the Nationwide Mortgage Licensing System and Registry and must be on the prescribed application forms.

(c) [(a)] The department is limited to those specific license and registration status codes available through the Nationwide Mortgage Licensing System and Registry. The Nationwide Mortgage Licensing System and Registry maintains a website that contains the specific status codes available and their definitions. The available status codes changed by the department are reflected in the licensee's record on the Nationwide Mortgage Licensing System and Registry and on the Nationwide Mortgage Licensing System and Registry Consumer Access website.

(d) [(b)] An applicant may be issued a license in an inactive status if the applicant completes the required application form and complies with all requirements of licensure except for the requirement of

an approved sponsorship. Upon submission and approval of a sponsorship, the license may be changed to active status.

(e) [(e)] An originator, through written notice to the department, may place his or her license in an inactive status at any time during the license term. While in an inactive status an originator must not engage in the origination of residential mortgage loans as defined in §81.2(6) [§81.2(7)] of this chapter, and must continue to meet the statutory requirements of the license. Upon submission and approval of a sponsorship, the license may be changed to an active status.

(f) [(f)] The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the issuance or renewal of any license pursuant to Finance Code, Chapter 157 as is deemed necessary or advisable to determine that the requirements of Finance Code, Chapter 157 have been met and maintained.

(g) [(g)] The Commissioner may authorize an investigation to be conducted against an originator if there is reasonable cause to suspect or believe that an originator may have been convicted of a criminal offense which may constitute grounds for the suspension or revocation of that originator's license.

(h) [(h)] An application, notice, or any other filing with the department will only be deemed submitted if it is complete. A filing is complete only if all required supporting documentation is included and only if all required fees have been received by the department. The application may be deemed withdrawn if an applicant fails to provide to the department, within 30 days from the date of request, any information or supplemental documentation.

(i) The Commissioner or the Commissioner's designee may at their discretion, after reviewing the circumstances of each situation, issue a license on a conditional basis.

§81.105. Fees.

(a) Fees relating to a license or registration shall be established by the Commissioner in accordance with Finance Code, Chapter 157. The amount of the fees may be modified upon not less than 30 days advance notice posted on the department's website.

(b) All fees are nonrefundable and nontransferable.

(c) The Commissioner may, in addition to any disciplinary action, collect a fee in an amount not to exceed \$50 for any returned check or credit card chargeback.

(d) For examinations that are conducted out of state, the Commissioner may collect reimbursement of actual expenses. Actual expenses incurred will be in compliance with department's policies and procedures.

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

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Caroline C. Jones

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§81.200, 81.202, 81.203, 81.205

The amendments are proposed under Finance Code, §157.011, which grants rulemaking authority to the Finance Commission of Texas.

The statutory provision affected by the proposed amendments are contained in Finance Code, Chapters 157 and 180.

§81.200. *Required Disclosures.*

(a) An originator sponsored under Finance Code, Chapter 157 shall include the following notice, Figure: 7 TAC §81.200(a), to a residential mortgage loan applicant with an initial application for a residential mortgage loan:

Figure: 7 TAC §81.200(a) (No change.)

(b) A mortgage banker or originator shall maintain in its records evidence of timely delivery of the disclosure in subsection (a) of this section.

(c) At each physical office, and on its website, a mortgage banker or an originator shall conspicuously post the following notice: Figure: 7 TAC §81.200(c) (No change.)

(d) A notice is deemed to be conspicuously posted under subsection (c) of this section if a customer with 20/20 vision can read it from each place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted. If applicable, a notice is deemed conspicuously posted if prominently displayed on the website.

§81.202. *Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.*

(a) No originator may:

(1) knowingly misrepresent his or her relationship to a residential mortgage loan applicant or any other party to an actual or proposed residential mortgage loan transaction;

(2) knowingly misrepresent or understate any cost, fee, interest rate, or other expense in connection with a residential mortgage loan applicant's applying for or obtaining a residential mortgage loan;

(3) disparage any source or potential source of residential mortgage loan funds in a manner which knowingly disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly participate in or permit the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a residential mortgage loan;

(5) as provided for by the Real Estate Settlement Procedures Act and its implementing regulations, broker, arrange, or make a residential mortgage loan in which the originator retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommend or encourage default or delinquency or continuation of an existing default or delinquency by a residential mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(7) induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan;

(8) alter any document produced or issued by the department, unless otherwise permitted by statute or regulation; or

(9) engage in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

(b) The term "improper dealings" in Finance Code, §157.024(a)(3) includes, but is not limited to the following:

(1) Acting negligently in performing an act for which a person is required under Finance Code, Chapter 157 to hold a license;

(2) Violating any provision of a local, State of Texas, or federal, constitution, statute, rule, ordinance, regulation, or final court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of Finance Code, Chapter 157 or this chapter including, but not limited to, the following:

(A) Real Estate Settlement Procedures Act[; 42 U.S.C. Chapter 2600];

(B) Regulation X[; 24 C.F.R. Part 3500];

(C) Consumer Credit Protection Act, [45 U.S.C. Chapter 1600 (Truth in Lending Act)];

(D) Regulation Z[; 12 C.F.R. Part 226];

(E) Equal Credit Opportunity Act[; 15 U.S.C. §1691];

(F) Regulation B[; 12 C.F.R. Part 202]; and

(G) Texas Constitution, Article XVI, §50.

(c) A mortgage banker or originator engages in a false, misleading or deceptive practice or improper dealings when in connection with the origination of a mortgage loan:

(1) The mortgage banker or originator offers other goods or services to a consumer in a separate but related transaction and the mortgage banker or originator engages in a false misleading or deceptive practice in the related transaction; or

(2) The originator offers other goods or services to a consumer in a separate but related transaction and the mortgage banker or originator engages in a false, misleading or deceptive practice in the related transaction, and the mortgage banker knew or should have known of the transaction; or

(3) A mortgage banker or originator affiliates with a second originator who offers other goods or services to a consumer in a separate but related transaction, and the second originator engages in a false, misleading or deceptive practice in the related transaction when the mortgage banker or originator participates with the second originator in the separate transaction or when the mortgage banker allows the second originator to originate loans in the name of the mortgage banker and the mortgage banker knew or should have known of the related transaction performed by the second originator.

(d) An originator receiving a verbal or written inquiry about his or her services shall respond accurately to any questions about the scope and nature of such services and any costs.

§81.203. *Advertising.*

(a) Licensees who advertise rates, terms, or conditions must comply with the disclosure requirements of [42 C.F.R. §226.24 (Regulation Z)].

(b) Any advertisement of residential mortgage loans which are offered by or through a mortgage banker or originator shall conform to the following requirements:

(1) An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to

any material requirements or limitations, the advertisement shall specify those requirements or limitations;

(2) Except as provided in subsection (c) of this section, the advertisement shall contain:

(A) the name of the originator followed by the name of the sponsoring mortgage banker, as designated in the records of the Commissioner as of the date of the advertisement;

(B) the originator's Nationwide Mortgage Licensing System and Registry identification number; and

(C) the mortgage banker's physical office address. If a physical office exists in this State, the advertisement must contain that address; otherwise, it must contain the address of a location registered with the department.

(3) An advertisement shall not make or omit any statement the result of which is to present a misleading or deceptive impression to consumers; and

(4) An advertisement shall otherwise comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a credit transaction. However, the requirements of subsection (b)(2) of this section shall not apply to:

(1) any advertisement which indirectly promotes a credit transaction and which contains only the name of the mortgage banker or originator and does not contain any contact information, such as the inscription of the name on a coffee mug, pencil, youth league jersey, or other promotional item; or

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers.

§81.205. Mortgage Call Reports.

(a) Call Report.

(1) A mortgage banker shall file a mortgage call report on a quarterly basis. The filing deadlines are set by the Nationwide Mortgage Licensing System and Registry.

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

(3) The call report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(b) Statement of Condition Report.

(1) A mortgage banker shall file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(c) Submission of a call report or statement of condition report, by a mortgage banker, satisfies the requirements of an originator under Finance Code, §180.101 for the period of sponsorship, provided that the originator's information is included in the report.

(d) Failure to file a mortgage call report or statement of condition report may ~~ean~~ result in ~~an~~ administrative action ~~penalty~~ for each missed or late filing].

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 Department of Savings and Mortgage Lending

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SUBCHAPTER B. LICENSING

7 TAC §§81.106 - 81.108

The Finance Commission of Texas proposes new 7 TAC Chapter 81, Subchapter B, §81.106, concerning Education Program; §81.107, concerning License Record Changes; and §81.108, concerning Background.

In general, the purpose of the proposed new rules is to implement statutory changes made by the 83rd Legislative Session.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Foster has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the proposed new rules will be clarification and implementation of the statute. There will be no effect to individuals required to comply with the rules as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed new rules may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705; or by email to smlinfo@sml.texas.gov within 30 days of this publication in the *Texas Register*.

The new rules are proposed under Finance Code, §157.011, which grants rulemaking authority to the Finance Commission of Texas.

The statutory provisions affected by the proposed rules are contained in Finance Code, Chapters 157 and 180.

§81.106. Education Program.

(a) Pre-licensing and continuing education courses required under Finance Code, Chapter 180 shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry.

(b) In addition to the pre-licensing educational requirements, in Finance Code, Chapter 180, a residential mortgage loan originator must complete three hours of education classes specifically relating to Texas statutes and rules.

§81.107. License Record Changes.

(a) Proper sponsorship and disclosure of each location at which an originator is conducting regulated activities is required to be on their Nationwide Mortgage Licensing System and Registry record.

(b) A licensee shall notify the Commissioner by filing a license amendment through the Nationwide Mortgage Licensing System and Registry of the following:

- (1) any change of address;
- (2) name change; or
- (3) a new, or changed company, organization, or assumed

name.

§81.108. Background.

(a) In connection with each application for an originator's license, the applicant shall provide authorization and fingerprints as prescribed by the Nationwide Mortgage Licensing System and Registry necessary to conduct a criminal background history check through the Federal Bureau of Investigation.

(b) In connection with each application for an originator's license, the Commissioner may conduct a criminal background history check through the Texas Department of Public Safety.

(c) In connection with each application for the issuance of an originator's license, the applicant shall provide authorization for the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain an independent credit report from a consumer reporting agency.

(d) In connection with each application for the issuance of an originator's license, the applicant shall provide to the Commissioner and the Nationwide Mortgage Licensing System and Registry information related to any administrative, civil, or criminal findings by a governmental jurisdiction.

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 June 24, 2013.

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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1297



PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER A. RULES FOR REGULATED LENDERS

The Finance Commission of Texas (commission) proposes amendments to §83.503, concerning Administrative Fee, and §83.605, concerning Limitation on Acquisition Charge, for regulated lenders.

In general, the purpose of the proposed amendments is to implement Senate Bill 1251, which allows the commission to adopt rules setting a higher Subchapter E administrative fee and a higher Subchapter F acquisition charge for regulated lenders. In order to provide a starting reference point regarding these fees, the following is some background and historical information concerning the current fees that may be charged by regulated lenders.

Chapter 342 of the Texas Finance Code allows a regulated lender who is licensed with the agency to charge an effective interest rate higher than 10% per year. The rates for non-real-estate loans are in Subchapters E and F. A lender can use the Subchapter E rates for any consumer loan, but can only use the Subchapter F loans for loans up to \$1,300. Both subchapters authorize lenders to impose a nonrefundable flat charge in addition to the amounts the lender charges that are based on the amount and term of the loan.

In Subchapter E, the charge is called the "administrative fee." It may not exceed \$25 and may only be charged once per year. In Subchapter F, the charge is called the "acquisition charge." It may not exceed \$10 and may only be charged once in connection with the loan. The Subchapter E limitation on the administrative fee was enacted in 1997 and has not been increased since that time. The Subchapter F acquisition charge has not been increased since it was set in 1981.

Since the establishment of these fees, the industry has encountered higher costs related to the evaluation of prospective borrowers and the delivery of loans to consumers. Compliance with more complex disclosures required by federal law, higher labor costs, and higher costs related to office space are just a few of the areas that regulated lenders have reported in their efforts to continue to provide services under Chapter 342.

Senate Bill (SB) 1251 as enacted by the 83rd Texas Legislature authorizes the commission to set by rule alternative reasonable maximum amounts for the administrative fee and acquisition charge. The bill also provides that the administrative fee and the acquisition charge are not interest. In order to properly implement SB 1251, the agency decided that it would be in the best interests of the industry as well as consumers to gather information from interested stakeholders regarding how the costs and market have changed since these fees were initially established many years ago.

Accordingly, the agency distributed an Advance Notice of Proposed Rulemaking (ANPR) and held a stakeholders meeting in order to prepare an informed and well-balanced proposal for the commission on the issue of setting appropriate reasonable maximum fee amounts. Several stakeholders provided verbal testimony regarding the costs involved to close these loans under Chapter 342. After the meeting, the agency received additional written comments from stakeholders further clarifying their testimony.

Upon review of all the thorough and insightful commentary provided, the agency also distributed a proposed rule draft to the stakeholders for specific early or pre-comment prior to the presentation of the rules to the commission. The agency has incorporated certain pre-comment suggestions offered by stakeholders into the proposed amendments. The agency believes that this early participation of stakeholders in the rulemaking process has greatly benefited the resulting proposal.

As stated earlier, the purpose of the proposed amendments is to establish alternative reasonable maximum fees for Chapter 342 regulated lenders as required under SB 1251. The individual purposes of each amendment are provided below.

The Subchapter E administrative fee compensates the lender for the administrative costs of closing a loan and providing money to the borrower. These costs may include labor, software, hardware, and office space. Under the proposed amendments to §83.503(1), the maximum administrative fee would be \$100. In

addition, the term "interest" is proposed for deletion from paragraph (5).

Similarly, the Subchapter F acquisition charge compensates the lender for the administrative costs of closing a loan and providing money to the borrower. These costs may include labor, software, hardware, and office space. The proposed amendments to §83.605 add subsection (a), which states that the maximum acquisition charge is based on 10% of the cash advanced. Although this amount may not fully cover the lender's administrative costs for smaller loans, the agency determined that it would be inequitable to allow lenders to impose an acquisition charge exceeding the amount recommended in the rule.

In the agency's opinion, the proposal achieves an appropriate balance by maintaining loan affordability for consumers while better allowing lenders to recover the costs of providing Chapter 342 loans.

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 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 the amendments will be that the commission's rules will implement recent legislative concepts providing greater clarity, will create opportunity for increased competition in the industry, and will modernize fee structures.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. In fact, the proposed amendments are anticipated to mitigate costs and increase revenue for regulated lenders, as the reasonable maximum amounts provided in the rules will allow lenders to recover a higher amount of their costs for closing loans. There will be no adverse economic effect on small or micro-businesses. Aside from the potential cost savings resulting from the proposed amendments, there will be no effect on individuals required to comply with the amendments as proposed.

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 proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

In addition, the agency would like to solicit comment from the public on the following two issues regarding Subchapter F acquisition charges:

(1) Should there be maximum dollar limit, i.e. a cap, on the acquisition charge? Please explain why or why not.

(2) Should there be a limitation on the frequency with which an acquisition charge can be assessed during a 365-day time period? Please explain why or why not.

DIVISION 5. INTEREST CHARGES ON LOANS

7 TAC §83.503

The amendments to §83.503 are proposed under Texas Finance Code, §342.201(g), which authorizes the commission to prescribe by rule a reasonable maximum amount for a Subchapter E loan administrative fee that is greater than the maximum in the statute.

These amendments are also proposed under Texas Finance Code, §342.007, which authorizes the commission to adopt rules necessary to implement and enforce Texas Finance Code, Chapter 342.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 342.

§83.503. *Administrative Fee.*

An authorized lender may collect an administrative fee pursuant to Texas Finance Code, §342.201(f), on interest-bearing and precomputed loans.

(1) As an alternative to the maximum administrative fee specified in Texas Finance Code, §342.201(f), an authorized lender may collect an administrative fee that does not exceed \$100. [~~To determine the maximum amount of the administrative fee, an authorized lender should ascertain the amount of the cash advance of the loan. If the cash advance is more than \$1,000, then the authorized lender may contract for, charge, or receive \$25. If the cash advance is \$1,000 or less, then the authorized lender may contract for, charge, or receive \$20.~~]

(2) - (4) (No change.)

(5) An administrative fee is a prepaid [~~interest~~] charge and may be contracted for, charged, or received in addition to the contractual interest charge authorized by Texas Finance Code, §342.201(a), (d), or (e).

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

Filed with the Office of the Secretary of State on June 21, 2013.

TRD-201302608

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: August 4, 2013

For further information, please call: (512) 936-7621



DIVISION 6. ALTERNATE CHARGES FOR CONSUMER LOANS

7 TAC §83.605

The amendments to §83.605 are proposed under Texas Finance Code, §342.252(b), which authorizes the commission to prescribe by rule a reasonable maximum amount for a Subchapter F loan acquisition charge that is greater than the maximum in the statute.

These amendments are also proposed under Texas Finance Code, §342.007, which authorizes the commission to adopt rules necessary to implement and enforce Texas Finance Code, Chapter 342.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 342.

§83.605. *Limitation on Acquisition Charge.*

(a) As an alternative to the maximum acquisition charge specified in Texas Finance Code, §342.252(a) and §342.259(a)(1), an authorized lender may collect an acquisition charge that does not exceed 10% of the cash advance of the loan. This subsection does not apply to a loan for which the cash advance is less than \$30.

(b) For a Texas Finance Code, Chapter 342, Subchapter F loan with a term of one month or less, an acquisition charge may only be contracted for, charged, or collected once during a month to the same borrower for that loan, any refinancing of that loan, or any new loan made to the borrower within the same month.

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 June 21, 2013.

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7621



CHAPTER 86. RETAIL CREDITORS

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §86.201

The Finance Commission of Texas (commission) proposes new 7 TAC §86.201, concerning Documentary Fee for retail creditors.

Currently, retail creditors are authorized to charge a maximum documentary fee of \$50 in connection with a retail installment contract for the sale of certain goods under Texas Finance Code, Chapter 345. This \$50 maximum has been in place since 1993. Senate Bill (SB) 1248, as enacted by the 83rd Texas Legislature, repeals the \$50 maximum and authorizes the commission to set by rule a reasonable maximum amount that retail creditors may charge for documentary fees.

In general, the purpose of the proposed new rule is to implement SB 1248 by setting reasonable maximum documentary fees for Chapter 345 retail creditors. Specifically, under §345.251 as amended by the bill, this documentary fee may be charged "for processing documents relating to the sale of a motorcycle, motor-driven cycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle."

As a note of background, the agency does not have examination authority over retail creditors and does not collect annual reports or other financial information from this industry. While the agency does investigate complaints, the complaints received regarding retail creditors have not historically related to the issue of documentary fees.

Thus, the agency decided that it would be in the best interests of the industry as well as consumers to gather information from interested stakeholders in order to prepare an informed and well-balanced proposal for the commission on the issue of setting an

appropriate reasonable maximum documentary fee, as required by SB 1248.

Accordingly, the agency distributed an Advance Notice of Proposed Rulemaking (ANPR) and held a stakeholders meeting where several stakeholders provided verbal testimony regarding the costs involved in preparing the documents to complete a retail installment contract under Chapter 345. The agency was informed that many retail creditors perform transactions requiring titling documents from two different agencies. Boats and boat motors are subject to titling and registration requirements enforced by the Texas Parks and Wildlife Department (TPWD) under the Texas Water Safety Act (Chapter 31, Texas Parks and Wildlife Code). The other six items covered by SB 1248 are subject to titling and registration requirements enforced by the Texas Department of Motor Vehicles (TxDMV) under the Certificate of Title Act (Chapter 501, Texas Transportation Code). After the meeting, the agency received additional written comments from stakeholders further clarifying their testimony.

Upon review of all the thorough and insightful commentary provided, the agency also distributed a proposed rule draft to the stakeholders for specific early or pre-comment prior to the presentation of the rule to the commission. The agency received supportive comments from three trade associations regarding the draft circulated. The agency believes that this early participation of stakeholders in the rulemaking process has greatly benefited the resulting proposal.

As stated earlier, the purpose of the proposed rule is to establish reasonable maximum documentary fees for Chapter 345 retail creditors as required under SB 1248. The individual purposes of each subsection are provided below.

Subsection (a) of proposed new §86.201 defines several terms used in the rule and the statutory provision being implemented, §345.251 of the Texas Finance Code. In particular, proposed §86.201(a)(4) groups together all of the wheeled vehicles subject to §345.251 under the term "covered land vehicle." Similarly, boats and boat motors are grouped together under the term "covered watercraft" in proposed §86.201(a)(5). These terms have been designated for use in the rule to provide clarity and parallel the sets of items that are titled with TxDMV (paragraph (4)) and those titled with TPWD (paragraph (5)).

Subsection (b) provides a reasonable maximum documentary fee of \$125 for a retail installment contract for the purchase of one or more covered land vehicles.

Subsection (c) provides a reasonable maximum documentary fee of \$125 for a retail installment contract for the purchase of one or more covered watercraft.

Subsection (d) provides a reasonable maximum documentary fee of \$175 for a retail installment contract for the purchase of both covered land vehicles and covered watercraft. This higher fee is intended to compensate the retail creditor for the documents and procedures that are necessary to title items with both TxDMV and TPWD.

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

Commissioner Pettijohn has also determined that for each year of the first five years proposed §86.201 is in effect, the public benefits anticipated as a result of the rule will be that the commission's rules will implement recent legislative concepts providing

greater clarity and consistency in the financing of retail goods. Additional public benefits are that the rule will create the opportunity for increased competition in the industry and will modernize fee structures.

There is no anticipated cost to persons who are required to comply with the new rule as proposed. In fact, the proposed rule is anticipated to mitigate costs and increase revenue for retail creditors, as the reasonable maximum documentary fee provided in the rule will allow retail creditors to recover a higher amount of their costs for document processing. There will be no adverse economic effect on small or micro-businesses. Aside from the potential cost savings resulting from the proposed rule, there will be no effect on individuals required to comply with the new rule as proposed.

Comments on the proposed new rule 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 proposed rule is published in the *Texas Register*. At the conclusion of the 31st day after the proposed rule is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The new rule is proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §345.251, as amended by SB 1248, authorizes the commission to set by rule a reasonable maximum amount for the documentary services of Chapter 345 retail creditors.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 345.

§86.201. Documentary Fee.

(a) Definitions.

(1) All-terrain vehicle--Has the meaning provided by Texas Transportation Code, §502.001(1).

(2) Boat--A vessel, as described by Texas Parks and Wildlife Code, §31.003(2).

(3) Boat motor--An outboard motor, as described by Texas Parks and Wildlife Code, §31.003(13).

(4) Covered land vehicle--A motorcycle, motor-driven cycle, moped, all-terrain vehicle, boat trailer, or towable recreational vehicle.

(5) Covered watercraft--A boat or boat motor.

(6) Moped--Has the meaning provided by Texas Transportation Code, §541.201(8).

(7) Motorcycle--Has the meaning provided by Texas Transportation Code, §541.201(9).

(8) Motor-driven cycle--Has the meaning provided by Texas Transportation Code, §541.201(10).

(9) Retail installment contract--Has the meaning provided by Texas Finance Code, §345.001(6) and refers to one or more instruments entered into that evidence a secured or unsecured retail installment transaction for the sale of goods under Texas Finance Code, Chapter 345.

(10) Towable recreational vehicle--Has the meaning provided by Texas Finance Code, §348.001(10-a).

(b) Contract for covered land vehicles only. For a retail installment contract for the purchase of one or more covered land vehicles, the reasonable maximum amount of the documentary fee is \$125.

(c) Contract for covered watercraft only. For a retail installment contract for the purchase of one or more covered watercraft, the reasonable maximum amount of the documentary fee is \$125.

(d) Contract for both covered land vehicles and covered watercraft. For a retail installment contract for the purchase of one or more covered land vehicles and one or more covered watercraft, the reasonable maximum amount of the documentary fee is \$175.

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 June 21, 2013.

TRD-201302609

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: August 4, 2013

For further information, please call: (512) 936-7621



CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) proposes amendments to §§89.206, 89.207, 89.504, 89.506, 89.507, and 89.701; new §89.208, concerning Advertising; and new Subchapter H, §§89.801 - 89.804, concerning Payoff Statements, with regard to property tax lenders.

In general, the purpose of the proposal is to implement Senate Bill (SB) 247, as enacted by the 83rd Texas Legislature and signed by the governor. The rule amendments make conforming changes related to the prohibition of persons over 65 from authorizing a tax lien transfer and the licensing exemption applicable to persons loaning within the second degree of consanguinity or affinity. The new rules provide provisions concerning advertising and payoff statements. Amendments to the recordkeeping rule add provisions related to the maintenance of advertising and payoff statement information. Additionally, two new forms are proposed in compliance with SB 247: a request for payoff statement form and a payoff statement form.

The agency distributed a proposed rule draft to stakeholders for specific early or pre-comment prior to the presentation of the rules to the commission. The agency believes that this early participation of stakeholders in the rulemaking process has greatly benefited the resulting proposal.

The agency carefully evaluated the stakeholders' comments and has incorporated numerous recommendations offered by the stakeholders. During the official comment period, stakeholders are welcome to submit any comments regarding issues not incorporated into the proposal. The following paragraphs outline the purposes of each rule amendment and new rule.

The proposed amendments to §89.206, concerning Application for Exemption, revise the section in compliance with SB 247. The proposed changes allow a licensing exemption to persons loaning within the second degree of consanguinity or affinity. Additionally, technical corrections related to removing unnecessary and obsolete language are also proposed.

In §89.207, concerning Files and Records Required, the proposed amendments make conforming changes in accordance with SB 247. In paragraph (1)(C), the word "solicitation" and a statutory reference to newly enacted Texas Finance Code, §351.0023 have been added regarding the maintenance of advertising records, along with technical corrections.

Proposed paragraph (3)(C) - (E) are amended to require property tax lenders to keep copies of requests for payoff statements that they receive, copies of payoff statements that they send, and copies of notifications that requests are deficient or that payoff statements were returned undeliverable. Proposed paragraph (3)(L) (current paragraph (3)(J)) is amended to conform to SB 247's amendments that repealed provisions authorizing nonjudicial foreclosures. In particular, proposed §89.207(3)(L) is amended to strike references to Texas Tax Code, §32.06(c-1), which was repealed by SB 247. In addition, proposed paragraph (3)(L)(ii), which describes documents related to nonjudicial foreclosure, is amended to clarify that it applies only to transactions closed after August 31, 2007, and before May 29, 2013 (i.e., the time period during which the provisions authorizing nonjudicial foreclosure were in effect).

Proposed new §89.208 provides guidelines concerning the advertising and solicitation of property tax loans in accordance with newly effective Texas Finance Code, §351.0023, as enacted by SB 247. Subsection (a) contains a general prohibition against false, deceptive, or misleading advertisements or solicitations. Subsection (b) outlines particular practices that will be considered false, deceptive, or misleading, including the use of certain phrases or words.

In §89.208(c), a property tax lender is required to include its name in all advertisements and solicitations. The name used by the property tax lender must be the one under which it is authorized to conduct business under Texas Finance Code, Chapter 351.

Several specific prohibitions are described by proposed §89.208(d) - (f), as follows: no advertisements or solicitations in the form of negotiable instruments or government documents, no use of simulated legal process or documents, and no impersonation of law enforcement or government employees.

The last two subsections of proposed new §89.208 delineate guidelines regarding the advertisement of certain rates. In §89.208(g), a property tax lender offering both variable-rate and non-variable rate transactions in the same advertisement or solicitation must use the phrases "Fixed Rate" and "Adjustable Rate" (or "Variable Rate") with equal prominence. Subsection (h) requires that the annual percentage rate (APR) and terms of repayment be calculated and disclosed in accordance with the Truth in Lending Act and its implementing regulations.

The proposed amendments to §89.504 contain conforming changes in compliance with SB 247. The first amendment in subsection (a)(5) implements the legislative revisions to Texas Tax Code, §32.06(a-2)(2). Proposed §89.504(a)(5) reads as follows: "a statement that unless the property owner agrees in writing, the property tax lender may not make the property tax loan." In subsection (a)(9), changes have been made as SB 247 prohibits persons over 65 from authorizing a tax lien transfer. Accordingly, the phrase "or persons age 65 or older" is proposed for deletion from §89.504(a)(9). In addition, a clarifying change has been made to subsection (a)(7) by adding the words "per year" after "18%." All of these proposed amendments are also reflected in the corresponding disclosure to property owner

form, as contained in Figure: 7 TAC §89.506(a). Additionally, a technical correction has been made in §89.504(c)(2)(C).

In §89.507(b), the proposed amendments provide a clarifying change regarding the appropriate party that uses and may make permissible changes to the model notice of delinquency form. At the beginning of subsection (b), "property tax lender" will be replaced with the correct party, which is the "mortgage servicer or the holder of a first lien."

Section §89.701 has been revised to provide further changes related to the fact that persons over 65 are no longer allowed to authorize a tax lien transfer. The phrase "either age 65 or older or" is proposed for deletion from subsection (a)(13), as well as from the corresponding standard sworn document contained in Figure: 7 TAC §89.701(c).

SB 247 creates two new provisions regarding payoff statements. The new provisions are contained in Texas Tax Code §32.06(a-4)(4) and (a-6). These provisions require the commission to prescribe the form that the holder of an existing lien on the property must use for requesting a payoff statement from a property tax lender, as well as the form for the payoff statement itself. They also require the commission to specify the amount of time within which the property tax lender must provide the payoff statement, and this amount of time must be at least seven business days after the property tax lender receives the request.

It appears that the legislature intended these provisions to be informational in nature. The provisions do not create a new situation in which a lienholder is entitled to pay off a property tax loan. Unlike §32.06(f) and (f-1), the new provisions do not specify that the lienholder "is entitled . . . to obtain a release of the transferred tax lien." Rather, the new provisions state that a lienholder may request a payoff statement, and that a property tax lender must respond by providing a payoff statement. The fact that a property tax lender provides this statement does not create a right for the lienholder to pay off the property tax loan.

The rules concerning payoff statements are contained in new Subchapter H, entitled "Payoff Statements," within Chapter 89. This subchapter consists of four rules: §§89.801 - 89.804.

Proposed new §89.801 contains the requirements for a lienholder's request for a payoff statement. Subsection (a) describes the scope of the rule, which applies only to requests made under Texas Tax Code, §32.06(a-6). Subsection (b) contains the required elements for the request. In particular, the request must contain contact information for the lienholder, the name of the borrower, an address or legal description of the property, and a valid method for delivering the payoff statement, which must be either a mailing address, a fax number, or an email address. The request must also contain a requested balance date (the date used to calculate the total payoff amount), and this date must be 7 to 30 days after the request date. Subsection (c) contains permissible elements for the request, such as additional contact information for the lienholder and reasonable additional delivery instructions. Subsection (d) describes the methods by which the request may be delivered: U.S. first-class mail, U.S. certified mail, a commercial delivery service with tracking, a courier service, fax, or email.

Proposed new §89.802 contains the requirements for the property tax lender's payoff statement. Subsection (a) describes the scope of the rule, which applies only to payoff statements that a property tax lender provides in response to a request described by §89.801(a). (The property tax lender may use the proposed form to respond to other requests, such as requests from the

borrower, if doing so does not violate any other law. But these other situations are not part of the scope of the rule.) Subsection (b) contains definitions, including the term "balance date," which refers to the date used to calculate the total payoff amount.

Subsection (c) of proposed new §89.802 contains the required elements for the payoff statement, including the elements described by Texas Property Code, §12.017, which defines a payoff statement as "a statement of the amount of: (A) the unpaid balance of a loan secured by a mortgage, including principal, interest, and other charges properly assessed under the loan documentation of the mortgage; and (B) interest on a per diem basis for the unpaid balance." Subsection (c) also requires the name and address of the property tax lender, the name of the borrower, the address or a legal description of the property, the balance date, and the next payment due date.

In proposed §89.802(d), the permissible elements for the payoff statement are outlined, such as additional contact information for the property tax lender and the name of a co-borrower. Subsection (e) specifies the method by which the property tax lender must calculate the total payoff amount if the next payment date precedes the balance date. Subsection (f) provides that if the property tax lender holds more than one property tax loan on the same property, then the property tax lender must, at a minimum, provide a payoff statement for each property tax loan.

Subsection (g) of proposed new §89.802 describes the methods by which the payoff statement may be delivered, and it mirrors the methods for delivery of the request. Subsection (h) provides that the payoff statement must be delivered within seven business days after the date on which the property tax lender receives the request. Subsection (i) describes best practices for the property tax lender to verify delivery of the payoff statement.

The last two subsections of proposed new §89.802 describe situations where delivery of a payoff statement would not be required. Subsection (j) provides that if the request does not contain a required element, or if it contains a material mistake in a required element, the property tax lender is not required to provide a payoff statement. However, the property tax lender must notify the requestor that the request is deficient (unless the request provides no valid way to communicate with the requestor in writing). Similarly, subsection (k) provides that if the payoff statement is returned undeliverable, the property tax lender must notify the requestor (unless the request provides no valid way to communicate with the requestor in writing, or the property tax lender provides the payoff statement by another method to which the requestor agrees).

Stakeholders presented concerns regarding the requirement to provide identification numbers used by the taxing units or the property tax lender on the forms. This requirement is contained in proposed §89.801(b)(7) and §89.802(c)(5). The proposed rules have been updated to require lienholders and property tax lenders to include one of the following: the tax account number, the property identification number, or the property tax loan number. The tax account or property identification number used by the taxing unit is part of the sworn document required by Texas Tax Code, §32.06(b-1) and 7 TAC §89.701(a)(6)(A). For both residential and commercial property, there can be more than one tax account for a single address. In this situation, an address alone is often not sufficient for accurate identification of the loan in question. Furthermore, the account number or property identification number used by the taxing unit is also available in the real property records. The agency believes that, at a minimum, one of these numbers would be readily available to the property

tax lender or the lienholder and that such information is necessary in order to properly identify the loan.

Proposed new §89.803 provides the required forms under Texas Tax Code, §32.06(a-6). Subsection (a) provides the form for the lienholder's request for a payoff statement. Subsection (b) provides the form for the payoff statement itself.

Proposed new §89.804 describes the permissible changes that may be made to the forms. The forms are strict, prescribed forms that may only be changed according to the exclusive list outlined in §89.804. For example, certain fields in the forms are optional and may be deleted. Also, subsection (b) allows a property tax lender to amend the additional fee descriptions as needed to provide a complete itemization of the total payoff amount.

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

Commissioner Pettijohn has determined that for each year of the first five years the new and amended rules are in effect the public benefit anticipated will be that the commission's rules will implement recent legislative concepts in order to provide greater clarity. Additional public benefits resulting from the proposal will be consistency in the transfer of tax liens, enhanced protection for consumers, and the availability of standard forms to request and provide payoff statements. It is the agency's belief that the proposed rule changes and forms will benefit property tax lenders, mortgage servicers and lienholders, as well as consumers.

There is no anticipated cost to persons who are required to comply with the new and amended rules as proposed. Persons required to comply with the new rules are already required by statute to provide the majority of the information described by the rules. Any costs are imposed by the statute and not the proposed rule changes.

The rules provide standard forms that comply with the statutes. In fact, the proposed rules may result in a potential cost reduction for persons who are required to comply through use of the standard forms. The rules are anticipated to reduce costs and increase the efficiency of business for property tax lenders by not requiring the investment of resources in the development of forms. There will be no adverse economic effect on small or micro-businesses, as the uniformity of the standard forms will either provide a neutral or positive effect on small businesses. Aside from the potential cost savings resulting from use of the standard forms, there will be no effect on individuals required to comply with the new and amended rules as proposed.

Comments on the proposal 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 §§89.206 - 89.208

The amendments and the new section are proposed under Texas Finance Code, §351.007, which authorizes the commis-

sion to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06.

Additionally, new §89.208, concerning Advertising, is proposed under Texas Finance Code, §351.0023 (Acts 2013, 83rd Legislature, effective May 29, 2013), which authorizes the commission to adopt rules to implement and enforce the statute regarding the solicitation and notification of property tax loans.

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

§89.206. Application for Exemption.

(a) For an individual to apply for exemption from licensing under this chapter as a qualifying individual under Texas Finance Code, §351.051(c)(2) [~~(Acts 2007, 80th Leg., ch. 1220)~~], the individual must provide a signed, dated, and notarized affidavit containing the following:

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

(5) a sworn statement that the individual is someone who:

(A) is related to the property owner within the second degree of consanguinity or affinity, as determined under Texas Government Code, Chapter 573 [is making a property tax loan from the individual's own funds to a spouse, former spouse, or persons in the lineal line of consanguinity of the individual lending the money]; or

(B) (No change.)

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

§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) Required records. A licensee must maintain the following items:

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

(C) Advertising and solicitation records, including examples of all written and electronic communications soliciting loans (including scripts of radio and television broadcasts, and reproductions of billboards and signs not at the licensed place of business) for a period of not less than one year from the date of use or until the next examination by OCC staff, whichever is later, in order to show compliance with Texas Finance Code, §341.403 and §351.0023;

(D) - (E) (No change.)

(2) (No change.)

(3) Property tax loan transaction file. A licensee must maintain a paper or imaged copy of a property tax loan transaction file for each individual property tax loan or be able to produce the same information within a reasonable amount of time. The property tax loan transaction file must contain documents that show the licensee's compliance with applicable law, including Texas Finance Code, Chapter 351; Texas Tax Code, §32.06 and §32.065, and any applicable

state and federal statutes and regulations. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the property tax loan transaction file if the electronic record can be accessed upon request. The property tax loan transaction file must include copies of the following records or documents, unless otherwise specified:

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

(C) Copies of any requests for payoff statements received by the licensee or its agent under Texas Tax Code, §32.06(a-6) and §89.801 of this title (relating to Requests for Payoff Statements);

(D) [~~(C)~~] Copies [If requested, copies] of any payoff statements issued by the licensee or its agent as required by Texas Tax Code, §32.06(a-6) and (f-3), [~~§32.06(f-3)~~ and] §89.603 of this title (relating to Fee for Payoff Statement or for Information on Current Balance Owed), and §89.802 of this title (relating to Payoff Statements);

(E) Copies of any notifications issued by the licensee or its agent that a request for a payoff statement was deficient, or that a payoff statement was returned undeliverable, as required by §89.802(j) and (k) of this title;

(F) [~~(D)~~] If the property tax loan is delinquent for 90 consecutive days, a notice of delinquency as required by Texas Tax Code, §32.06(f) including evidence that the notice was sent by certified mail;

(G) [~~(E)~~] If received by the licensee, a copy of the notice of delinquency to the licensee from the mortgage servicer or holder of the first lien as specified by Texas Tax Code, §32.06(f-1) and §89.505 of this title (relating to Requirements for Notice of Delinquency to Transferee) and §89.506 of this title;

(H) [~~(F)~~] If the property tax loan is paid off or otherwise satisfied, a copy of the release of lien as required by Texas Tax Code, §32.06(b);

(I) [~~(G)~~] If fees are assessed, charged, or collected after closing, copies of the receipts, invoices, checks or other records substantiating the fees as authorized by Texas Finance Code, §351.0021 and Texas Tax Code, §32.06(e-1) including the following:

(i) if the licensee acquires collateral protection insurance, a copy of the insurance policy or certificate of insurance and the notice required by Texas Finance Code, §307.052; and

(ii) receipts or invoices along with proof of payment for attorney's fees assessed, charged, and collected under Texas Finance Code, §351.0021(a)(4) and (5) [~~§351.0021(a)(5)~~];

(J) [~~(H)~~] Copies of any collection letters or notices sent by the licensee or its agent to the borrower;

(K) [~~(I)~~] For a property tax loan where any separate disclosures or notices have been given, copies of the disclosures and notices sent;

(L) [~~(J)~~] For property tax loan transactions involving a foreclosure or attempted foreclosure, the following records required by Texas Tax Code, Chapters 32 and 33:

(i) For transactions involving judicial foreclosures under Texas Tax Code, §32.06(c) [~~§32.06(e)(1)~~];

(I) any records pertaining to a judicial foreclosure including records from the licensee's attorneys, the court, or the borrower or borrower's agent;

(II) if sent by a non-salaried attorney of the licensee, any notice to cure the default sent to the property owner

and each holder of a recorded first lien on the property as specified by [Texas Tax Code, §32.06(e-1)(1)(C) and] Texas Property Code, §51.002(d) including verification of delivery of the notice;

(III) if sent by a non-salaried attorney of the licensee, any notice of intent to accelerate sent to the property owner and each holder of a recorded first lien on the property, [as specified by Texas Tax Code, §32.06(e-1)(1)(C)] including verification of delivery of the notice;

(IV) if sent by a non-salaried attorney of the licensee, any notice of acceleration sent to the property owner and each holder of a recorded first lien on the property [as specified by Texas Tax Code, §32.06(e-1)(1)(C)];

(V) any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06, such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;

(VI) records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.02 and §34.04;

(VII) the foreclosure deed upon sale of the property;

(VIII) if the property is purchased at the foreclosure sale by the licensee, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);

(ii) For transactions closed after August 31, 2007, and before May 29, 2013, involving non-judicial foreclosures under Acts 2007, 80th Leg., R.S., ch. 1329, §1, sec. 32.06(c)(2) (previously codified at Texas Tax Code, §32.06(c)(2)) [Texas Tax Code, §32.06(e)(2)]:

(I) the notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as required by [Texas Tax Code, §32.06(e-1)(1)(C) and] Texas Property Code, §51.002(d) including verification of delivery of the notice;

(II) the notice of intent to accelerate sent to the property owner and each holder of a recorded first lien on the property, [as required by Texas Tax Code, §32.06(e-1)(1)(C)] including verification of delivery of the notice;

(III) the notice of acceleration sent to the property owner and each holder of a recorded first lien on the property [as required by Texas Tax Code, §32.06(e-1)(1)(C)];

(IV) any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06, such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;

(V) the application for Order for Foreclosure under Texas Rules of Civil Procedure, Rule 736.1;

(VI) copies of any returns of citations issued under Texas Rules of Civil Procedure, Rule 736.3, showing the date and time the citation was placed in the custody of the U.S. Postal Service;

(VII) copies of any responses filed contesting the Application for Order for Foreclosure as described in Texas Rules of Civil Procedure, Rule 736.5;

(VIII) the motion and proposed order to obtain a default order, if any, under Texas Rules of Civil Procedure, Rule 736.7;

(IX) the order granting or denying the application for foreclosure as specified under Texas Rules of Civil Procedure, Rule 736.8;

(X) the notice provided to the recorded preexisting lienholder, at least, 60 days before the date of the proposed foreclosure [as required by Texas Tax Code, §32.06(e-1)(2)];

(XI) the notice of sale as required by Texas Property Code, §51.002(b) including verification of delivery of the notice;

(XII) records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.021 and §34.04;

(XIII) the foreclosure deed upon sale of the property;

(XIV) if the property is purchased at the foreclosure sale by the licensee, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);

(M) [(K)] Any other documents necessary to establish the licensee's compliance with the law.

(4) - (8) (No change.)

§89.208. Advertising.

(a) General. A property tax lender may not provide a false, deceptive, or misleading advertisement or solicitation to a potential borrower.

(b) False, deceptive, or misleading practices. An advertisement or solicitation will be considered false, deceptive, or misleading if the advertisement or solicitation:

(1) fails to contain the notice required by Texas Finance Code, §351.0023(a) or (b);

(2) fails to fully disclose the terms required by Texas Finance Code, §351.0023(d) or (e);

(3) fails to clearly and conspicuously disclose the name of the property tax lender;

(4) offers any rates, terms, or conditions relating to a property tax loan unless the property tax lender actually makes a reasonable number of those loans;

(5) makes any representations or statements with reference to the ease of procuring a loan, the speed with which it may be completed, the freedom from credit inquiries, or any other implied difference in service or policy unless the property tax lender will comply with the representations or statements made;

(6) uses phrases such as "most trusted," "property tax lawsuit notification," "lowest rates," "lowest costs," "quickest service," "easy payments," or "repayment in easy installments";

(7) uses "pre-approved," "approved," or any similar expression, unless the statement or offer is unconditional;

(8) uses the word "fixed" to refer to rates or payments for a variable-rate transaction or other credit transaction where the payment will increase; or

(9) indicates or implies that the potential property tax borrower has been sued or will be sued by the taxing unit or another party unless the property tax lender has verified that the taxing unit or another party has sued or will sue within 30 days of when the advertisement or solicitation is sent.

(c) Name of property tax lender. An advertisement or solicitation must include the name of the property tax lender. A property

tax lender may only advertise or solicit with the name under which it is authorized to conduct business under Texas Finance Code, Chapter 351.

(d) No advertisements or solicitations in form of negotiable instruments or government documents. A property tax lender or its agents may not distribute or display mailing pieces that have a similarity or resemblance to a blank counter check; postal or express money order; U.S. currency, cash, exchange certificate, or any negotiable instrument whatsoever; or any federal, state, or local government warrant. A property tax lender may not use an envelope, advertisement, or solicitation that contains text, a symbol, or other information indicating or implying that it is from federal, state, or local government.

(e) No use of simulated legal process or documents. A property tax lender or its agent must not use any simulated legal process, simulated legal document, or legal form designed to suggest that legal proceedings have been commenced or completed when in fact they have not.

(f) No impersonation of law enforcement or government employees. A property tax lender or its agent may not impersonate or attempt to impersonate any law enforcement officer or other agent of federal, state, or local governments.

(g) Both variable-rate and non-variable-rate transactions in the same advertisement or solicitation. If a property tax lender offers both variable-rate and non-variable-rate transactions in the same advertisement or solicitation, a property tax lender must use the phrases "Fixed Rate" and "Adjustable Rate" (or "Variable Rate") with equal prominence and must fully and clearly disclose any terms in accordance with Texas Finance Code, §351.0023.

(h) Annual percentage rate and terms of repayment. The annual percentage rate and terms of repayment described by Texas Finance Code, §351.0023(d) - (e) must be calculated and disclosed in accordance with the Truth in Lending Act, 15 U.S.C. §1664, and Regulation Z, 12 C.F.R. §1026.24.

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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Leslie L. Pettijohn

Commissioner

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SUBCHAPTER E. DISCLOSURES

7 TAC §§89.504, 89.506, 89.507

The amendments are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06.

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

§89.504. *Requirements for Disclosure Statement to Property Owner.*

(a) Required elements. A disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before

the execution of a tax lien transfer must contain the following required elements:

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

(5) a statement that unless the property owner agrees in writing, the property tax lender may not make [~~include non-delinquent taxes in~~] the property tax loan;

(6) (No change.)

(7) a statement that the property tax lender may also assess closing costs and interest not to exceed 18% per year;

(8) (No change.)

(9) a statement that if the property is a homestead, disabled persons [~~or persons age 65 or older~~] are entitled to tax deferral under Texas Tax Code, §33.06;

(10) - (16) (No change.)

(b) (No change.)

(c) Delivery.

(1) (No change.)

(2) No face-to-face interview. If there is no face-to-face interview, a licensee must deliver a disclosure statement containing all of the elements outlined by subsection (a) of this section, as prescribed by Figure: 7 TAC §89.506(a) of this title, to the owner of the property.

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

(C) Co-applicants. If property owners who are co-applicants provide the same mailing address, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants, a copy must be [~~de~~] delivered to each of the co-applicants.

(d) - (e) (No change.)

§89.506. *Disclosures.*

(a) The required disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer is presented in the following figure. Figure: 7 TAC §89.506(a)

(b) (No change.)

§89.507. *Permissible Changes.*

(a) (No change.)

(b) A mortgage servicer or the holder of a first lien [~~property tax lender~~] may consider making the following types of changes to the model notice of delinquency under Texas Tax Code, §32.06(f-1) as provided by Figure: 7 TAC §89.506(b) of this title:

(1) - (6) (No change.)

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

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SUBCHAPTER G. TRANSFER OF TAX LIEN

7 TAC §89.701

The amendments are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06.

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

§89.701. *Sworn Document Authorizing Transfer of Tax Lien.*

(a) Required information. A sworn document containing all of the required information provided by this subsection meets the requirements of Texas Tax Code, §32.06(a-1). A sworn document under this section must contain the following information:

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

(13) the following statement: "I have been given notice that if this property is my homestead and I am [either age 65 or older or] disabled, I may be eligible for a tax deferral under Texas Tax Code §33.06.";

(14) - (17) (No change.)

(b) (No change.)

(c) Standard sworn document. The standard sworn document under Texas Tax Code, §32.06(a-1) is presented in the following figure. Figure: 7 TAC §89.701(c)

(d) (No change.)

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

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SUBCHAPTER H. PAYOFF STATEMENTS

7 TAC §§89.801 - 89.804

The new sections are proposed under Texas Tax Code, §32.06(a-4)(4) and (a-6) (Acts 2013, 83rd Legislature, effective May 29, 2013), which requires the commission by rule to prescribe the form and content of a request for a payoff statement and the transferee's response to the request (i.e., the payoff statement). Further, Texas Tax Code, §32.06(a-6) requires the commission by rule to require a transferee who receives a request for a payoff statement to deliver the requested payoff statement on the prescribed form within a time period set by the rule.

Additionally, the new sections are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06.

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

§89.801. *Requests for Payoff Statements.*

(a) Scope. This section applies only to a request described by Texas Tax Code, §32.06(a-6) that:

(1) includes a request for the total payoff amount of a property tax loan;

(2) is sent to a property tax lender; and

(3) is sent by:

(A) the holder of an existing recorded lien on the property subject to the property tax loan; or

(B) a mortgage servicer (or another person) on behalf of a lienholder described by subparagraph (A) of this paragraph.

(b) Required elements. A request under this section must include:

(1) the date of the request;

(2) the requested balance date, which must be:

(A) no earlier than 7 days after the date of the request;

and

(B) no later than 30 days after the date of the request;

(3) the name and address of the lienholder that is making the request (or on whose behalf the request is made);

(4) the name of the property tax lender;

(5) the name of the borrower;

(6) the address or a legal description of the property subject to the property tax loan;

(7) one of the following:

(A) the tax account number used by the taxing unit(s);

(B) the property identification number used by the taxing unit(s); or

(C) the property tax loan number used by the property tax lender;

(8) a statement substantially similar to the following: "We (the lienholder) request a statement of the total amount due under the property tax loan on the property listed above, as of the requested balance date. We hold an existing recorded lien on the property. We are making this request under Section 32.06(a-6) of the Texas Tax Code.";

(9) a statement substantially similar to the following: "The payoff statement should be delivered to us within 7 business days of when you receive this request, unless Title 7, Section 89.802 of the Texas Administrative Code provides otherwise."; and

(10) a valid delivery method by which the property tax lender must deliver the payoff statement. The lienholder must choose only one delivery method, and the delivery method must be one of the following:

(A) a mailing address;

(B) a fax number; or

(C) an email address.

(c) Permissible elements. A request under this section may include:

(1) additional contact information for the requesting lienholder;

(2) the name, address, and contact information of the mortgage servicer (or another person who sends the request on the lienholder's behalf);

(3) the name of one or more co-borrowers on the property tax loan;

(4) the address of the property tax lender; and

(5) reasonable additional instructions regarding delivery of the payoff statement.

(d) Method of delivery. The request must be delivered by one or more of the following methods:

(1) U.S. mail with prepaid first-class postage;

(2) U.S. certified mail with return receipt requested;

(3) a commercial delivery service with tracking abilities;

(4) a courier service;

(5) fax to a number designated by the property tax lender for receiving requests for payoff statements; or

(6) email to an address designated by the property tax lender for receiving requests for payoff statements.

§89.802. Payoff Statements.

(a) Scope. This section applies only to a payoff statement described by Texas Tax Code, §32.06(a-6) that a property tax lender provides in response to a request described by §89.801(a) of this title (relating to Requests for Payoff Statements).

(b) Definitions. In this section, the following terms have the following definitions:

(1) Balance date--The date used to calculate the total payoff amount. The balance date must be the same date as the requested balance date on the request, if possible. If it is not possible for the property tax lender to provide a balance date that is the same as the requested balance date, then the balance date must be as close as possible to the requested balance date.

(2) Business day--A day on which a property tax lender is open for business.

(3) Requestor--A person who sends a request described by §89.801(a) of this title.

(4) Total payoff amount--The total amount due under a property tax loan as of the balance date.

(c) Required elements. A payoff statement under this section must include:

(1) the date of the payoff statement;

(2) the name and address of the property tax lender;

(3) the name of the borrower;

(4) the address or a legal description of the property subject to the property tax loan;

(5) one of the following:

(A) the tax account number used by the taxing unit(s);

(B) the property identification number used by the taxing unit(s); or

(C) the property tax loan number used by the property tax lender;

(6) the total payoff amount;

(7) the balance date;

(8) a statement substantially similar to the following: "The total payoff amount is the total amount due under the property tax loan, as of the balance date stated above.";

(9) an itemization of the total payoff amount, which must include:

(A) the unpaid principal balance on the property tax loan;

(B) the accrued interest as of the balance date; and

(C) any other fees that are part of the total amount due under the property tax loan, with an individual description for each fee;

(10) the due date of the next payment; and

(11) the per diem interest that will accrue after the balance date, expressed as a dollar amount.

(d) Permissible elements. A payoff statement under this section may include:

(1) additional contact information for the property tax lender; and

(2) the name of one or more co-borrowers on the property tax loan.

(e) Calculation of total payoff amount. If the due date of the next payment is before the balance date, then the property tax lender must calculate the total payoff amount by assuming that:

(1) the borrower will not make the next payment; and

(2) apart from accrued interest, the property tax lender will not impose any additional charges after the date of the payoff statement and before the balance date.

(f) Multiple property tax loans on the same property. If a property tax lender receives a request relating to real property on which the property tax lender holds more than one property tax loan, then the property tax lender must provide a separate payoff statement for each of those property tax loans. Each payoff statement must comply with this section. In addition, the property tax lender may provide a combined payoff statement showing the total amount required to pay off all of the property tax loans on the real property.

(g) Method of delivery. The payoff statement must be delivered by the method specified in the request, if the request includes a valid delivery method as provided by §89.801(b)(10) of this title. Delivery to a mailing address must be made by one or more of the following methods:

(1) U.S. mail with prepaid first-class postage;

(2) U.S. certified mail with return receipt requested;

(3) a commercial delivery service with tracking abilities;

or

(4) a courier service.

(h) Timing of delivery. The payoff statement must be delivered within seven business days after the date on which the property tax lender receives the request.

(i) Verification of delivery. Verifying delivery of the payoff statement is a best practice for a property tax lender. A property tax

lender may rely on an established system of verifiable procedures to verify delivery of a payoff statement under this section. A property tax lender may use any of the following verification methods:

(1) U.S. mail. The property tax lender must allow a reasonable period of time for delivery by mail. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

(2) Commercial delivery service with tracking abilities. For payoff statements delivered by commercial delivery service, a dated receipt indicating that the payoff statement was successfully delivered to the mailing address provided in the request will constitute verification of delivery.

(3) Courier service. For payoff statements delivered by courier service, a dated receipt indicating that the payoff statement was successfully delivered to the mailing address provided in the request will constitute verification of delivery.

(4) Fax. For payoff statements delivered via fax, a dated fax confirmation page indicating that the payoff statement was successfully transmitted to the fax number provided in the request will constitute a rebuttable presumption for sufficient delivery.

(5) Email. For payoff statements delivered via email, a dated reply email indicating that the payoff statement was successfully delivered to the email address provided in the request will constitute verification of delivery.

(j) Deficient request. If the request does not contain an element required by §89.801(b) of this title, or if the request contains a material mistake in a required element, then the property tax lender is not required to send a payoff statement under this section. However, the property tax lender must notify the requestor in writing that the request is deficient. The property tax lender must send this notification within two business days of discovery that the request is deficient, and within seven business days of receiving the request. A property tax lender is not required to provide this notification if the request provides no valid method of communicating with the requestor in writing.

(k) Payoff statement returned undeliverable. If a property tax lender attempts delivery of the payoff statement by the method specified in the request, and the payoff statement is returned undeliverable, then the property tax lender must notify the requestor in writing that the payoff statement was returned undeliverable within two business days of discovery that the payoff statement was returned undeliverable. A property tax lender is not required to provide this notification if:

(1) the request provides no valid method of communicating with the requestor in writing; or

(2) the property tax lender delivers the payoff statement by a different method to which the requestor agrees.

§89.803. Model Forms.

(a) Request for payoff statement. The required request under Texas Tax Code, §32.06(a-6) and §89.801 of this title (relating to Requests for Payoff Statements) is presented in the following figure. Figure: 7 TAC §89.803(a)

(b) Payoff statement. The required payoff statement under Texas Tax Code, §32.06(a-6) and §89.802 of this title (relating to Payoff Statements) is presented in the following figure. Figure: 7 TAC §89.803(b)

§89.804. Permissible Changes.

(a) Requests for payoff statements. A person who submits a request under Texas Tax Code, §32.06(a-6) and §89.801 of this title

(relating to Requests for Payoff Statements), must use the form prescribed by Figure: 7 TAC §89.803(a) of this title, but may consider making one or more of the following technical changes:

(1) deleting fields labeled "Optional";

(2) deleting the word "Optional" and surrounding parentheses;

(3) replacing "Mortgage servicer" with an applicable description of the person submitting the request on the lienholder's behalf (e.g., "Law firm");

(4) replacing "Property tax lender" with "Tax lien transferee" or "Transferee";

(5) replacing "Borrower" with "Property owner";

(6) replacing "Address of property" with "Legal description of property";

(7) replacing "property tax loan" with "tax lien transfer";

or
(8) adding reasonable instructions regarding delivery of the payoff statement.

(b) Payoff statements. A property tax lender who sends a payoff statement under Texas Tax Code, §32.06(a-6) and §89.802 of this title (relating to Payoff Statements), must use the form prescribed by Figure: 7 TAC §89.803(b) of this title, but may consider making one or more of the following technical changes:

(1) deleting fields labeled "Optional";

(2) deleting the word "Optional" and surrounding parentheses;

(3) replacing "Property tax lender" with "Tax lien transferee" or "Transferee";

(4) replacing "Borrower" with "Property owner";

(5) replacing "Address of property" with "Legal description of property";

(6) replacing "property tax loan" with "tax lien transfer";

(7) deleting the fields labeled "Additional fee description," if the total payoff amount does not include any fees other than the unpaid principal balance and accrued interest;

(8) replacing "Additional fee description" with a description of an additional fee (e.g., "Return check fee"), and deleting the surrounding parentheses; or

(9) adding fields to describe additional fees.

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 June 21, 2013.

TRD-201302613

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: August 4, 2013

For further information, please call: (512) 936-7621



PART 6. CREDIT UNION
DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS,
MERGERS, LIQUIDATIONS

SUBCHAPTER A. GENERAL RULES

7 TAC §91.115

The Credit Union Commission (Commission) proposes amendments to §91.115, Safety at Unmanned Teller Machines. The proposed amendments simplify the rule and revise the rule for consistency with the statute and consistency with the Department of Banking rule for Safety at Unmanned Teller Machines.

The amendments are proposed as a result of the Credit Union Department's general rule review.

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 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, Subchapter D of the Texas Finance Code, and under Texas Finance Code §§122.001, 122.011, 122.156, which govern applications submitted to the Commissioner for approval.

The specific section affected by the proposed amended rule is Texas Finance Code §59.301.

§91.115. *Safety at Unmanned Teller Machines.*

(a) Definitions [and Standards]. Words [The following words] and terms used in this subchapter that are defined in the Finance Code §59.301, have the same meanings as defined in the Finance Code[; when used in this section, shall have the following meanings, unless the context clearly indicates otherwise].

[(1) Access area—a paved walkway or sidewalk that is within 50 feet of an unmanned teller machine. The term does not include a public right-of-way or any structure, sidewalk, facility, or appurtenance incidental to the right-of-way.]

[(2) Access device—has the meaning assigned by Regulation E (12 CFR Section 205.2), as amended, adopted under the Electronic Fund Transfer Act (15 USC Section 1693 et seq.), as amended.]

(b) [(3) Measurement of candle foot [Candle] power.[—the light intensity of candles on a horizontal plane at 36 inches above ground level and five feet in front of the area to be measured.] For the purposes of measuring compliance with the Finance Code §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand, or dust storm, or other similar condition.

[(4) Control—the authority to determine how, when, and by whom an access area or defined parking areas may be used, maintained, lighted, and landscaped.]

[(5) Member—an individual to whom an access device is issued for personal, family, or household use.]

[(6) Defined parking area—the portion of a parking area open for unmanned teller machine member parking that is contiguous to an access area, is regularly, principally, and lawfully used during the period beginning 30 minutes after sunset and ending 30 minutes before sunrise for parking by members using the machine, and is owned or leased by the owner or operator of the machine or owned or controlled by a person leasing the machine site to the owner or operator of the machine. The term does not include:]

[(A) a parking area that is physically closed or on which one or more conspicuous signs indicate that the area is closed; or]

[(B) a level of a multiple-level parking area other than the level considered by the operator of the unmanned teller machine to be the most directly accessible to a member.]

[(7) Operator—the person primarily responsible for the operation of an unmanned teller machine.]

[(8) Owner—a person having the right to determine which financial institutions are permitted to use or participate in the use of an unmanned teller machine.]

[(9) Unmanned teller machine—a machine, other than a telephone, capable of being operated solely by a member to communicate to a credit union:]

[(A) a request to withdraw money from the member's account directly or under a line of credit previously authorized by the credit union for the member;]

[(B) an instruction to deposit money in the member's account with the credit union;]

[(C) an instruction to transfer money between one or more accounts maintained by the member with the credit union;]

[(D) an instruction to apply money against an indebtedness of the member to the credit union; or]

[(E) a request for information concerning the balance of the account of the member with the credit union.]

(c) [(b)] Safety evaluations.

(1) The credit union owner or operator of an unmanned teller machine shall evaluate the safety of each machine on a basis no less frequently than annually, unless the machine is exempted under the Finance Code §59.302.

(2) The safety evaluation shall consider at the least the factors identified in the Finance Code, §59.308.

(3) The credit union owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the credit union owner or operator of the machine.

(d) [(e)] Notice. A credit union issuer of access devices shall furnish its members with a notice of basic safety precautions that each member should employ while using an unmanned teller machine.

(1) Access devices. [A credit union issuer of access devices shall furnish its members with a notice of basic safety precautions that each member should employ while using an unmanned teller

machine.] The notice shall be delivered personally or mailed to each member, whose mailing address is in this state, when an access device is issued, renewed or replaced.

(2) Ongoing Notice.

(A) If a credit union maintains a website, it must include the notice or a link to the notice in a reasonably conspicuous place on the website.

(B) If a credit union does not maintain a website but distributes a newsletter, it must include the notice at least once during each calendar year in any newsletter distributed to its members.

(C) If a credit union does not have an Internet website or does not distribute a newsletter, the notice must be included with any privacy notice the credit union is required to give or send its members.

(3) [(2)] Content. The notice of basic safety precautions required by this section must be provided in written form which can be retained by the member and may include recommendations or advice regarding:

(A) security at walk-up or drive-up unmanned teller machines;

(B) protection of code or personal identification numbers;

(C) procedures for lost or stolen access devices;

(D) reaction to suspicious circumstances;

(E) safekeeping and disposition of unmanned teller machine receipts, such as the inadvisability of leaving an unmanned teller machine receipt near the unmanned teller machine;

(F) the inadvisability of surrendering information about the member's access device over the telephone;

(G) safeguarding and protecting the member's access device, such as a recommendation that the member treat the access device as if it was cash;

(H) protection against unmanned teller machine fraud, such as a recommendation that the member compare unmanned teller machine receipts against the member's monthly statement; and

(I) other recommendations that the credit union reasonably believes are appropriate to facilitate the security of its unmanned teller machine users.

(e) [(d)] Leased [Lease] premises.

(1) Noncompliance by landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If a credit union owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the credit union shall notify the landlord in writing of the requirements of the Finance Code, Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code, Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code, Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(f) [(e)] Video surveillance equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The credit union owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under the Finance Code, §59.308. If a credit union owner or operator determines that video surveillance equipment should be installed, the credit union must provide for selecting, testing, operating, and maintaining appropriate equipment.

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

Filed with the Office of the Secretary of State on June 24, 2013.

TRD-201302620

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: August 4, 2013

For further information, please call: (512) 837-9236



TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

16 TAC §303.41

The Texas Racing Commission proposes an amendment to 16 TAC §303.41. The section relates to the allocation of live race dates. The rule currently provides that only the Commission may allocate race dates to associations. This proposal would provide scheduling flexibility to the racetracks by permitting the executive director to approve the addition, deletion, or modification of live race dates, provided that: a racetrack's request does not add any live race dates that are more than fourteen calendar days before or after the track's Commission-approved race meet; is supported in writing by each affected breed organization; is supported in writing by each affected racetrack; and in the case of a horse track, is supported in writing by the horsemen's organization. The proposal also provides that the executive director may consider the agency's budget and workload status in determining whether to approve the request.

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Mr. Trout has determined that for each year of the first five years that the amendment is in effect the anticipated public benefit will be to support the economic viability of the state's licensed racetracks. By providing additional flexibility, the racetracks will be able to more quickly modify race dates in response to changing circumstances.

The amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic

impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

The amendment will have a positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Carolyn Norwood, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§303.41. *Allocation of Race Dates.*

(a) - (i) (No change.)

(j) Change in Race Date Allocation.

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

(3) The executive secretary may approve an association's request to add, delete, or modify live race dates, provided that the request:

(A) does not add any live race dates that are more than fourteen calendar days preceding the start of the Commission-approved race meet or more than fourteen days following the end of the Commission-approved race meet;

(B) is supported in writing by each breed organization affected by the change;

(C) is supported in writing by each association that is affected by the change; and

(D) in the case of a horse racing association, is supported in writing by the horsemen's organization.

(4) In determining whether to approve a request under this subsection, the executive secretary may consider the effect that approving the request would have on the workload and budget status of the Commission.

(5) For purposes of this subsection, an allocation of live race performances may be changed in the same manner as a change in the allocation of live race dates.

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 June 21, 2013.

TRD-201302614

Mark Fenner

General Counsel

Texas Racing Commission

Earliest possible date of adoption: August 4, 2013

For further information, please call: (512) 833-6699



CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER B. OPERATIONS OF RACETRACKS

DIVISION 3. OPERATIONS

16 TAC §309.151

The Texas Racing Commission proposes an amendment to 16 TAC §309.151. The section relates to changes in the management of a racing association's ownership, board of directors, or management committee. The proposed amendment would streamline the transfer of racetrack ownership interests of less than five percent. With limited exceptions, the rule currently requires prior Commission approval of all changes in ownership, even those involving minute ownership interests. This proposal would adjust the rule to only require prior approval of ownership interests that result in an ownership of five or more percent. The rule would still require a background check and provide the executive director with the opportunity to refer any transfer, no matter how small, to the Commission for review. However, if no disqualifying information were found, the executive director could directly approve the transfer.

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Mr. Trout has determined that for each year of the first five years that the amendment is in effect the anticipated public benefit will be to streamline the process of approving small changes in racetrack ownership.

The amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the amendment.

The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Carolyn Norwood, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §6.13(b), which provides that each transaction that involves an acquisition or a transfer of a pecuniary interest in an association must receive the prior approval of the Commission.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§309.151. *Change of Ownership, Board of Directors, or Management Committee.*

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

(d) The transfers of pecuniary interests in an association described by this subsection are considered to have the prior approval of the Commission, subject to the right of the Commission to object to the transfer after it is informed of the transfer and has performed any background investigation required by the Commission or the Department of Public Safety. Not later than 10 days after the effective date of a transfer to which this subsection applies, the transferee shall submit to the Commission information regarding the transfer on a form prescribed by the Commission and the Department of Public Safety. If the transferee is not an individual, the form required by this subsection must be submitted for all officers, directors, partners, and members of any management committee of the transferee. The following transfers are considered to have the prior approval of the Commission in accordance with this subsection:

(1) (No change.)

(2) a transfer to any person of a direct or indirect beneficial ownership interest or a warrant or other option to buy a direct or indirect beneficial ownership interest in an association provided that[-]

[(A) the interest was transferred after having been registered under the Federal Securities Act of 1933; and]

[(B)] following the transfer, the person owns, directly or indirectly, less than 5.0% of the total beneficial ownership interests in the association, and[-]

(A) the interest was transferred after having been registered under the Federal Securities Act of 1933; or

(B) the person is an individual and has submitted:

(i) the person's name, residence address and telephone number, business address and telephone number, date of birth, physical description, and driver's license number; and

(ii) if requested by the Department of Public Safety, a set of fingerprints in a form approved by the Department.

(3) Upon receipt of the background report from the Department of Public Safety or verification by the Department that no further background check will be required, the executive secretary shall notify the association within 10 days as to whether a transfer under this subsection should be considered approved or whether the executive secretary will seek further review by the Commission.

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

Filed with the Office of the Secretary of State on June 21, 2013.

TRD-201302615

Mark Fenner

General Counsel

Texas Racing Commission

Earliest possible date of adoption: August 4, 2013

For further information, please call: (512) 833-6699



SUBCHAPTER D. GREYHOUND RACETRACKS DIVISION 2. OPERATIONS

16 TAC §309.355

The Texas Racing Commission proposes an amendment to 16 TAC §309.355. The section relates to the classification of grey-

hounds into grades and the scheduling of competitive races. The proposed amendment would provide additional scheduling flexibility to the greyhound racetracks and provide additional racing opportunities for greyhounds. The rule currently provides that a racing secretary may only schedule up to eight mixed grade races per week. A mixed grade race is one in which greyhounds of two different grades, but no more than one grade apart, compete in the same race. The amendment would allow the association's racing secretary to schedule additional mixed grade races after review and approval by the Commission's racing judges.

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Mr. Trout has determined that for each year of the first five years that the amendment is in effect the anticipated public benefit will be to provide additional scheduling flexibility to the greyhound racetracks and to provide additional racing opportunities for greyhounds.

The amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

By permitting additional racing opportunities for greyhounds, the amendment will have a positive effect on the state's greyhound breeding and training industry. It will have no effect on the state's agricultural industry or the state's horse breeding and training industry.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Carolyn Norwood, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§309.355. *Grading System.*

(a) - (k) (No change.)

(l) The racing secretary may schedule up to eight mixed grade races each week. The racing judges may approve additional mixed grade races each week if there will otherwise be an insufficient number of greyhounds on the active list to complete the scheduled performances. A mixed grade race must be designated by the letter "T" in the racing program.

(m) - (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 June 21, 2013.

TRD-201302616

◆ ◆ ◆
TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 473. FEES

22 TAC §473.7

The Texas State Board of Examiners of Psychologists proposes an amendment to §473.7, concerning Penalties. The proposed amendment would be necessary to reflect the change in terminology from "continuing education" to "professional development" set out in the proposed change to Board rule §461.11.

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

Mr. Spinks also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700 or email brenda@tsbep.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

§473.7. Penalties.

(a) Professional development [Continuing education] non-compliance--\$500; and

(b) Disciplinary penalties (Refer to Board rule §470.22 of this title [Rule 470.22]).

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 June 20, 2013.

TRD-201302585

Darrel D. Spinks
Executive Director

Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: August 4, 2013
For further information, please call: (512) 305-7706

◆ ◆ ◆
TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER D. NEWBORN SCREENING PROGRAM

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§37.51 - 37.54 and 37.57 - 37.64, the repeal of §§37.55, 37.56, and 37.65, and new §37.55 and §37.56, concerning the Newborn Screening Program.

BACKGROUND AND PURPOSE

The department administers the Newborn Screening Program, which is designed to screen all newborns in the state for certain genetic or heritable disorders. If identified and treated early, serious problems such as developmental delays, intellectual disability, illness, or death can be prevented or ameliorated. The program is structured into two major components. The department's laboratory receives the blood specimens collected from newborns, performs the testing, and reports the results to submitters of the specimens. If the results for one of the laboratory tests are out of the expected range, the results are received by the clinical care coordination staff in the Newborn Screening Program for prompt followup and intervention. Limited benefits are then potentially available to eligible individuals. Benefits include confirmatory testing, medications, vitamins, and dietary supplements (metabolic foods, low-protein foods). The rules which are the subject of this rulemaking action apply to the operations of both of these two main components of the Newborn Screening Program.

The proposed amendments are necessary to: (1) reflect House Bill (HB) 411, 82nd Legislature, Regular Session, 2011, which amended Health and Safety Code, Chapter 33; (2) update, clarify, and restructure sections to improve readability and user-friendliness, while also better reflecting the underlying statutory authority; and (3) repeal §73.21 of this title, related to laboratory specimen submission for newborn screening, and concurrently propose to bring that content over to the new proposed §37.55 with changes, so that program information can be located within one chapter instead of two chapters.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.51 - 37.65 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed, although revisions are needed as detailed herein.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §37.51 would provide a more comprehensive summary of the contents of the subchapter, taking into account all the revisions that would be made in this rulemaking action. The proposed amendments would also

improve clarity and readability. The section is proposed to be amended to identify Department of State Health Services as the "department" as referenced throughout the rules, to identify the statutory authority for various elements of the Newborn Screening Program, and to identify the Newborn Screening Program as the "program" throughout the rules for consistency of terminology. Language would be added to clarify that the screening of newborns in Texas involves two blood draws collected on separate days and changes are also proposed to better reflect the underlying statutory authority regarding what is included in the screening tests under the Texas program. The proposed amendments would delete the abbreviation of "PKU" and leave the term "phenylketonuria," and would also modify the section to use the term "disorders" throughout the rules for consistency. Certain summary information regarding specimen collection kits from §73.21 of this title is included in §37.51 as part of the proposed repeal of §73.21, which is published in this same *Texas Register* issue. Proposed amendments specify that specimen collection kits are obtained from the department, and proposed new language would clarify that screening results are reported by the department as required by law. Proposed amendments would emphasize that newborn screening results are not diagnostic and that the department strongly recommends that newborns are placed under the care of a licensed physician who has the appropriate expertise for diagnosis and treatment. Clarifying language regarding benefit services potentially available to individuals who have an abnormal screen result or are pending the confirmation of a diagnosis has been added, along with a cross-reference to §37.61 where the details for available benefits are located.

Proposed amendments to §37.52 represent an update of the subchapter's definitions section, and would also include new terminology used in other rule sections proposed for amendment in this rulemaking action. Existing paragraphs (1) - (3), (8), (9), (12), (15), and (20) are proposed for deletion because the conditions would not be individually named in the proposed rules as amended. Existing paragraphs proposed for deletion of definitions that are no longer necessary, given other changes proposed in this rulemaking action to other sections, are paragraphs (7), (11), (17), (18), (19), and (21).

Proposed new paragraph (1) would add a definition for the term "abnormal screening results" which would align with common, current medical terminology. Proposed new paragraph (3) would add a definition for the term "charity care newborn" to specify circumstances that a no-cost specimen collection kit can be used as stated in §37.55(b)(1)(A). Proposed new paragraph (4) would add a definition for the term "CHIP-eligible newborn" by cross-referencing the applicable statutory language and by specifying circumstances when a no-cost specimen collection kit can be used as stated in §37.55(b)(1)(A). Revisions are proposed to existing paragraph (5) to better reflect underlying statutory authority. Revisions are proposed to the renumbered paragraph (7), "Health care practitioner" definition, to more fully cite the underlying, updated statutory authority and to reflect current titles used in the profession, and with these changes there would no longer have to be a "provider" definition in this section. Proposed new paragraph (8) would add a definition for the term "Medicaid-eligible newborn" by cross-referencing the applicable statutory language and to specify circumstances that a no-cost specimen collection kit can be used as stated in §37.55(b)(1)(A). The definition for "Newborn Screen" in paragraph (14) is proposed to be deleted and replaced in paragraph (10) with the updated term "Newborn screening," which better reflects the underlying

statutory authority. Revisions are proposed to renumbered paragraph (11) to cross-reference the proper legal authority regarding the practice of medicine in Texas. A definition is proposed to be added for the term "Specimen" in paragraph (12) because it would be used often throughout the subchapter as revised, and also to specify that, in the context of this program, capillary blood is used and collected on the specialized filter paper that is a part of the specimen collection kit. Revisions are proposed to renumbered paragraph (13) to reflect statutory changes to Health and Safety Code, Chapter 33, made by HB 411, as well as to provide clarity regarding the specimen collection kits currently being used by the department. The paragraphs are proposed to be renumbered throughout, as appropriate.

Amendments to §37.53 are proposed to provide clarification regarding the disorders which are screened for in the Texas program at any given time, with changes proposed for the section title to better reflect the actual section content. The current nationally-recognized recommended newborn screening panel is the federal Health and Human Services' Recommended Uniform Screening Panel, which contains conditions identified via tests on blood specimens, as well as conditions identified via point-of-care testing, such as hearing screening. Rules established by §§37.51 - 37.65 apply only to those conditions identified via tests on blood specimens. House Bill 790, 79th Legislature, Regular Session, 2005, required expansion of newborn screening in Texas to the American College of Medical Genetics recommended core panel of disorders (currently known as the Health and Human Services Recommended Uniform Screening Panel), as funding allows. Because of this, and because disorders can be added or removed from the Recommended Uniform Screening Panel, the proposed rule change would provide a link to the program's website, which will contain a list of the specific disorders included in the department's screening program at any given time. This change would therefore allow the department to always have an up-to-date list available to stakeholders, without having that list possibly contradict a separate list found in department rules.

Proposed amendments to §37.54 (including the section title) would better align the rule section with the underlying statutory authority regarding the newborn screening exemption. A parent, managing conservator, or legal guardian may only object to newborn screening on the ground that the tests conflict with religious tenets or practices of an organized church of which they are adherents. The proposed language would also reflect the requirement, found at Health and Safety Code, §33.012(b), that the physician (or other person attending a newborn, if no physician is present) must enter that objection into the medical record of the child, and that the objection must be signed by the parent, managing conservator or legal guardian.

Existing §37.55 is proposed to be new §37.56, with changes, while proposed new §37.55 would include information that currently resides in §73.21, related to laboratory specimen submission for newborn screening. Section 73.21 is being repealed as published in this same *Texas Register* issue. This reorganization is proposed so that program rules can be consolidated within one chapter instead of two chapters. As part of this proposed reorganization, existing language in §37.56 is proposed for repeal (see next paragraph for full discussion).

Proposed new §37.55 would cover the procedures for obtaining and then submitting specimen collection kits. The proposed language would reflect HB 411 amendments to Health and Safety Code (e.g., §33.0111). The statute contains very proscriptive re-

quirements regarding the design of the specimen collection kits. These kits have to be ordered by the department many months in advance, balancing projected need in Texas for the coming year against agency budget constraints. Complicating agency budgeting efforts in this area is the fact that, while some kits are purchased from the department, some are provided to hospitals, etc. free of charge for use with Medicaid-eligible, CHIP-eligible and charity-care eligible newborns. For all these reasons, it is essential that users of the kits: only order those that they will actually need over the time period in question; make reasonable efforts to project needs as divided between purchase kits and free kits; and pay their invoices in a timely manner. Proposed amendments at subsection (b)(1) would state that the department requires a written estimate when submitting an order for kits, based on previous usage. The language also differentiates between the free kits (described previously) and those which must be purchased (a rule cross-reference to §73.54 is added for the department fee schedule), and makes clear that free kits can only be used in certain specified situations. Proposed language at subsection (b)(2) would state that the department reserves the right to adjust quantities ordered to ensure the availability of kits statewide for all submitters based on kit availability. This language is necessary because there is a lag time of several months between the department ordering of new kits and the delivery of those kits. Therefore, if a shortage occurs due to increased demand, the department does not have the option of quickly obtaining more kits to fulfill all orders. It is crucial that the department take measures to make sure that kits are available for the immediate needs of persons attending to a birth in Texas. Language pertaining to payment for specimen collection kits, now proposed at subsection (b)(3), reflects a change to 90 days from the current 120 days. This change is intended to reflect a more appropriate time period, which the department believes is a reasonable step to take to improve the efficiency of laboratory operations, particularly given current resource constraints on the department. Proposed amendments at subsection (b)(4) make clear that only department-approved specimen collection kits are accepted for the submission of specimens. This is to ensure that collection kits are of adequate quality for specimen collection, so that specimens can be accurately tested in an appropriate period of time. Kits obtained from the department also comport with the requirements of Health and Safety Code, Chapter 33, which any other kit is not likely to do. Proposed amendments at subsection (b)(5) describe the requirements (each time newborn screening samples are collected from a child) of a physician (or other person attending a newborn, if no physician is present) to provide the parent, managing conservator, or legal guardian with the Texas Newborn Screening Parent Information form, and the Parental Decision for Storage and Use of Newborn Screening Blood Spot Cards form. This language is pursuant to the HB 411 statutory amendments. Also, pursuant to those amendments, the proposed language states that the physician (or other person attending a newborn, if no physician is present) must submit the signed parental decision form back to the department if the completed form is given to the physician (or other person attending a newborn, if no physician is present) by the parent, legal guardian, or managing conservator of the child. As required by HB 411, the proposed amendments at subsection (b)(5) allow for parents, managing conservators or legal guardians in the state to decide on the disposition of residual dried blood spots of their child, pursuant to Health and Safety Code, §33.0112, which specifies that, unless a parent, managing conservator, or guardian consents to further storage and use as limited by the statute the department will destroy

the genetic material no later than the second anniversary of receipt (and may only use the specimens during that time period for the more-limited purposes provided in the statute). Proposed language at subsection (b)(5) also reflects the statutory requirement that the physician (or other person attending a newborn, if no physician is present) must verify that the department form has been given to the parent/managing conservator/legal guardian, and must make this verification as directed by the department. Proposed amendments at subsection (b)(6) provide instructions for the handling of a specimen collection kit which is thought to be defective by the person/entity which received it. If the department verifies the defect, a credit toward future kit purchases will be given (if the defective kit was, in fact, purchased).

Existing language at §37.56 is proposed to be deleted and replaced by language currently found at §37.55, with changes. The proposed reorganization and other revisions would improve the clarity, readability and user-friendliness of these sections, as well as updating them to reflect current laboratory operations. The title of the section is proposed to reflect the various proposed revisions discussed in this paragraph. The new language in the section would reflect statutory changes made by HB 411, including those changes related to the responsibilities of persons attending to a birth in Texas. Specific changes in instructions regarding the specified use of a proper specimen collection kit are reflected in proposed revisions to subsections (a) and (b). In subsection (a), the collection of capillary blood by either a physician (or other person attending a newborn, if no physician is present) would be clarified to better match the underlying statutory authority and to provide an appropriate cross-reference, given the proposed reorganization of the subchapter. The word "specialized" as it pertains to the type of filter paper used to capture capillary blood is proposed to be added to clarify the requirement in subsection (b). Timeframes for collection of the first and second newborn screen are proposed to be fully described in subsection (c). The general discretion (as allowed by statute in Health and Safety Code, Chapter 33) that the department commissioner has to move the Texas program to a single-screen model, if he finds that such a change would be appropriate, is proposed to be summarized at (c)(1), while proposed subsection (c)(2) details how stakeholders would be notified of such a change. Proposed subsection (d) would cover situations where the department requires a new specimen to be submitted for a child in order to better ensure accurate test results. Proposed subsection (e) would detail how specimen collection should be timed when transfusions are involved, to help ensure accurate test results. The word "strictly" is proposed to be added to renumbered at subsection (f), in order to emphasize the importance of following all directions regarding the drying of blood specimens to avoid cross-contamination and other conditions which might invalidate the sample. Language regarding provider responsibilities at subsection (g) is proposed to be updated to: (1) reflect HB 411 amendments to the statute; (2) use more accurate and updated terminology regarding impacted health care workers; (3) better reflect the underlying statutory authority regarding persons affected; (4) detail responsibilities regarding a physician (or other person attending a newborn, if no physician is present) verifying that the statutorily-required forms have been given to the parents; (5) require the physician (or other person attending a newborn, if no physician is present) to promptly send to the department the completed forms if so requested by the parent/legal guardian/managing conservator, as required under the statute; and (6) improve readability and user-friendliness.

Proposed amendments to §37.57 concerning screening procedures of blood specimens would provide clarity and a rule cross-reference necessitated by the proposed reorganization of the subchapter, and improved readability. Existing language found at paragraph (2) is proposed for deletion as no longer necessary because it is outdated and no longer applicable. Existing paragraph (3) is proposed to be renumbered as paragraph (2), with changes which would update the screening procedures referenced and improve readability.

Proposed amendments to §37.58 include updating the section title by adding "Reporting" and "Screening Results and Confirmed Cases" to more accurately describe the contents of the section and to achieve consistency of terminology given other proposed changes in this rulemaking action. Proposed changes to subsection (a) would add an appropriate statutory cross-reference regarding notification of abnormal screening results, and would improve readability and include a statement that the department will provide recommendations on clinical confirmation following abnormal screen results. Various changes are proposed to subsection (b) which would better reflect the actual entities involved and the process by which the department requests case follow-up, along with changes to better reflect the limitations of the department's role as specified in the underlying statutory authority. Proposed amendments to subsection (c) would better reflect the underlying statutory authority, and would improve readability. Proposed amendments to subsection (d) would improve readability, achieve consistency of terminology, and generally clarify how the department will identify newborn screening specialists who may assist a physician and other health care practitioners with newborns that have abnormal screening results. Proposed amendments to subsection (e) would better reflect the underlying statutory authority, improve readability, and provide the appropriate rule cross-reference. Proposed revisions to the subsection would also specify the deadline for the reporting already required. Thirty days was chosen for that deadline because reporting to the department within this timeframe allows the department to evaluate screening protocols for effectiveness and ensure that appropriate follow-up care has been provided for these very time-sensitive cases. Proposed revisions to subsection (f) would clarify what the department does with the referenced data, as well as more accurately stating the sources of that data. Proposed revisions to the subsection would also provide an appropriate rule cross-reference related to the disorders that are screened. Minor changes to grammar and consistency of terms are proposed for subsection (g), and a cross-reference is proposed to be added in subsection (h) to both the department rule where conditions screened for are listed and to the underlying statutory authority for the registry found at Health and Safety Code, §33.015(c).

Proposed amendments to §37.59, including the section title, would update the program name referenced, achieve consistency of terminology given other changes proposed in this rulemaking action, include appropriate a rule cross-reference, and improve readability.

Proposed amendments to §37.60 would update the section title to clarify that the benefits are a component of the program, and would improve readability throughout. The proposed changes would also clarify that funding limitations for the referenced benefits are dependent on how funds are allocated in the agency budget, as opposed to in the overall legislative appropriation for agency operations, and that the department has discretion (consistent with the eligibility requirements found in §37.61) regarding the types of benefits provided, as well as how provision of

the limited funds would be prioritized. The existing reference to a percentage of the federal poverty income guideline is proposed to be deleted here and moved to §37.61 because that is the section pertaining to eligibility criteria. The proposed changes would also include the addition of low-protein foods and confirmatory testing as examples of benefits which may be obtained, with the latter benefit more fully explained than in existing language. Proposed changes would also achieve consistency of terminology, given other changes to the subchapter proposed in this rulemaking action, and would add appropriate cross-references. The wording of paragraph (6) is proposed to be amended to improve clarity and readability.

Proposed amendments to §37.61 would include an updated reference to the benefits component of the program in the section title for greater clarity. Proposed changes for subsection (a) would add a rule cross-reference §37.60 to reflect the new organizational structure. Proposed changes in subsection (a)(1) would add a rule cross-reference, and would make it clear that an abnormal screening result or a pending confirmation of a diagnosis of a disorder is required for benefits eligibility. As discussed in the preceding paragraph, the reference to the percentage of the federal poverty income level is proposed to be moved from §37.60 to §37.61(a)(3) where eligibility requirements are more appropriately placed. Proposed amendments to (a)(5) would make it clear that those seeking benefits under this section must provide information requested by the department, which the department in its discretion believes it needs to evaluate the request, and do so in a timely manner. The term "legal" is proposed to be added to "guardian" in subsection (a)(6) to use more appropriate legal terminology. Proposed amendments to subsection (b) would provide an appropriate cross-reference, adjust terminology to better capture the legal intent of the language, update program names, and improve readability. Also, language regarding reference to "no cost or reduced cost" is proposed to be removed in subsection (b) because it is redundant (already referenced in §37.60).

Proposed amendments to §37.62 would include an updated reference to the benefits component of the program in the section title for greater clarity. Proposed amendments to subsection (a) would include a rule cross-reference, changes designed to improve readability, updated agency contact information, and clarification that complete applications for program benefits must be filed in accordance with deadlines provided by the department. The insertion of the terms "legal" and "seeking services" is proposed to be added in subsection (b)(2) and (3) respectively, to better capture the legal intent of the provisions and to improve clarity and readability. Proposed amendments to subsection (d) include deletion of the phrase "for newborn screening benefits" as redundant and no longer necessary. Proposed amendments in subsection (d)(2) would improve readability, clarity, and provide a more appropriate name for the referenced policy. Language which is proposed to be added in subsection (d)(3) would reiterate that a complete application for program benefits must include additional information that is requested by the department. Proposed changes to subsection (e) would reflect that the list is an "and/or" type of list. Proposed changes to subsection (f) would improve readability, clarity, and would better capture the legal intent of the provision. Proposed changes at subsection (f)(2) would achieve consistency of terminology within the subchapter. The change proposed at subsection (f)(3) would make clear that department staff will not declare all criteria met if it, in its judgment, believes that there is a deficiency(s). Proposed changes at subsection (g) would improve readability and

eliminate the vague and inappropriate term "substantially" as a modifier to "complete." That latter change is needed because an application needs to be complete to be evaluated, not something less than complete, and handling applications in this way would achieve better consistency and predictability in department practices.

Proposed amendments to §37.63 include grammatical changes and an updated reference to the benefits component of the program in the section title for greater clarity. The organization of the section is also proposed to be improved for greater clarity and readability. Rule cross-references are proposed to be added in subsections (a), new (a)(1), and (b). Existing subsection (a)(1) and (a)(2) are proposed to be revised to delete redundant and unnecessary language. Non-substantive wording changes are also proposed for revised subsection (a)(1) to improve clarity and readability. Renumbered subsection (a)(3) is proposed to be simplified to improve readability and clarity, provide examples of information which might be requested, and would include elimination of the word "periodic" so as to avoid an implication that department requests for further information are guaranteed to occur at regular intervals. Non-substantive grammatical changes are proposed for renumbered paragraph (4) to improve readability, and renumbered paragraph (5) would clarify that the program must remain within budgetary limitations. References in subsection (b) to adjustments in "poverty income guidelines" are proposed for deletion because overall budgetary limitations, rather than the specific limitations of the federal poverty income guidelines as applied, form the subject matter of this subsection. A rule cross-reference to §37.60 (related to Newborn Screening Program Benefits) is also proposed to be added to this subsection, along with addition of the word "regarding" to improve readability. Non-substantive grammatical changes are proposed for renumbered subsections (c) and (d) to improve readability. New renumbered subsection (d) would also include a statement obligating the department to state its reasons for the proposed action as described in the provision, to ensure clarity and transparency in the process. New proposed language in subsections (e) - (g) would provide greater clarity regarding the hearing rights of the person affected by the department action under this section. These hearing provisions are consistent with other department hearings in comparable situations, already in department regulations at §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures). This language would replace existing language at subsection (b)(3), and would provide more clear instructions for the person who may wish to seek a hearing.

Proposed amendments to §37.64 reflect the establishment, since the current rules were written, of a Newborn Screening Advisory Committee at Health and Safety Code, §33.017. The title is proposed to be modified to reflect the underlying statutory authority regarding this particular advisory committee, and all remaining existing language in the section is proposed to be deleted and replaced with new language derived from those statutory provisions. New paragraphs (1) - (3) would define the scope of matters on which the Newborn Screening Advisory Committee may legally submit recommendations to the department. The rules would reflect that under the statutory provisions in question, the scope of the committee is limited to those tests that are performed by department's laboratory (or another laboratory approved by the department, of which there are currently none). The amendments to the scope of matters that the committee may consider are specific as to screening tests performed on dried blood spots, and are not inclusive of all disorders in the Health and Human Services' Recom-

mended Uniform Screening Panel or any new disorders added to the panel that are not performed using dried blood spots. Point-of-care screening such as newborn hearing screening, for example, is located in a separate chapter in the Health and Safety Code and is administered in a separate program within the department. Further, any point-of-care screening that is performed on a newborn or infant and is not a laboratory-based test is outside the scope of these rules and the scope of this advisory committee.

Section 37.65 is proposed to be repealed in its entirety since new statutory language regarding confidentiality of the information in question was contained in HB 411, which created Health and Safety Code, Chapter 33, §33.018 (Confidentiality). The department does not believe that any regulation is needed on the subject, as the language in the statute is sufficient.

FISCAL NOTE

Jann Melton-Kissel, Director, Specialized Health Services Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed, other than greater efficiencies resulting from improved organization, clarity, readability and user-friendliness.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Jann Melton-Kissel has also determined that there should be no adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices, beyond what is already required by statute, in order to comply with the sections.

REGULATORY FLEXIBILITY ANALYSIS

Government Code, Chapter 2006, was amended by the HB 3430, 80th Legislature, Regular Session, 2007, to require, as part of the rulemaking process, state agencies to prepare a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rules. There is an exception to this requirement, however. An agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small businesses, would not be protective of the "health, safety and environmental and economic welfare of the state." When the proposed rules are an implementation of legislative directives because of statutory changes, that proposed rule language becomes *per se* consistent with the health, safety, or environmental and economic welfare of the state, and therefore the department need not consider alternative methodologies as part of the preamble small business impact analysis.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL GOVERNMENT

There are no anticipated costs to persons who are required to comply with the sections as proposed. There is no fiscal impact to local employment.

PUBLIC BENEFIT

Jann Melton-Kissel has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to improve how the state newborn screening program screens all Texas babies for certain heritable and other disorders and provides

follow-up clinical care coordination services to those identified with an abnormal (out-of-range) screening result, by ensuring that confirmatory test(s) and treatment are received, if needed. These proposed rule amendments will increase the efficiency of department operations, and will increase the user-friendliness of the rules for stakeholders because of improved organization, clarity and readability. The new rules would provide for greater agency transparency in its processes, and make agency actions more predictable for stakeholders. All of this would constitute a public benefit.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to David R. Martinez, Newborn Screening Unit, Specialized Health Services Section, Division of Family and Community Health Services, Department of State Health Services, Mail Code 1918, P.O. Box 149347, Austin, Texas, 78714-9347, or by email at David.Martinez@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §§37.51 - 37.64

STATUTORY AUTHORITY

The amendments and new rules are authorized by Health and Safety Code, §33.002, which requires the department to adopt rules necessary to carry out the program, and by Chapter 33 in general; and Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The amendments and new rules affect Health and Safety Code, Chapters 33 and 1001; and Government Code, Chapter 531.

§37.51. *Purpose.*

(a) This subchapter describes [These sections describe] the Newborn Screening Program (program) administered by the Department of State Health Services (department) pursuant to Texas Health and Safety Code, Chapter 33. Each newborn delivered in the state must be screened, which involves [subjected to] two blood draws collected on separate days, as described in this subchapter, followed by department laboratory screening tests on those blood specimens for [screens for multiple disorders to identify the newborn that may be at risk of having] phenylketonuria [(PKU)], other heritable diseases, [or] hypothyroidism, and certain other disorders as detailed in §37.53 of this title (relating to Disorders for Which Blood Specimen Screening is Performed).

(b) This subchapter also details legal requirements applicable to physicians (or other persons attending a newborn, if no physician is present).

(c) Specimen collection kits are obtained from the department as referenced in this subchapter. Screening results [Abnormal screens] are reported by the department as provided by law [to the newborn's health care practitioner]. A screen may produce false positive or false negative results, and should not be relied upon as diagnostic. For this reason, the department strongly recommends that the child be placed under the care of a licensed physician with appropriate expertise for diagnosis and treatment.

(d) This subchapter also details follow-up, reporting, and record keeping on abnormal screening results and confirmed cases.

(e) This subchapter also identifies [These sections also identify] program services which are available to individuals who have an abnormal screening result (pending confirmation of diagnosis), or a confirmed diagnosis of a disorder referenced in this subchapter. Additionally, this subchapter establishes [heritable disease or hypothyroidism and establish] eligibility criteria, financial participation requirements and procedures for the orderly provision of the identified services to eligible individuals, subject to §37.61 of this title (relating to Eligibility Requirements for the Newborn Screening Program Benefits).

§37.52. *Definitions.*

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

(1) Abnormal screening result(s)--An out-of-range laboratory test result.

[(1) 21-hydroxylase deficiency--An inherited disorder, which if not treated, may lead to serious illness and death.]

[(2) Amino acid disorder--An inherited disorder, which if not treated, may cause mental retardation or death.]

[(3) Biotinidase deficiency--An inherited disorder, which if not treated, may cause mental retardation, hearing loss, poor muscle control, or death.]

(2) [(4)] Bona fide resident--A person who:

(A) is physically present within the geographic boundaries of the state;

(B) has an intent to remain within the state;

(C) maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(D) has not come to Texas from another country for the purpose of obtaining medical care, with the intent to return to the person's native country;

(E) does not claim residency in any other state or country; and

(i) is a minor child residing in Texas whose parent, managing conservator, or legal guardian is a bona fide resident;

(ii) is a person residing in Texas who is the legally dependent spouse of a bona fide resident; or

(iii) is an adult residing in Texas, including an adult whose parent, managing conservator, or legal guardian is a bona fide resident or who is his/her own legal guardian.

(3) Charity care newborn--A patient who is not insured or self-pay, and is not covered or eligible to be covered for newborn screening services by Medicaid, Children's Health Insurance Program (CHIP), or any other government program.

(4) CHIP-eligible newborn--A patient who is eligible for CHIP coverage in accordance with Texas Health and Safety Code, Chapter 62.

(5) Commissioner--The commissioner of the Department of State Health Services [or his successor].

(6) Department--The Department of State Health Services or its successor.

[(7) Diagnostic test--A medical evaluation to confirm results of a screen;]

[(8) Fatty acid oxidation disorder--An inherited disorder, which if not treated, may cause mental retardation or death;]

[(9) Galactose-1-phosphate uridylyltransferase deficiency--An inherited disorder, which if not treated, may cause fatal infection or mental retardation;]

(7) [(40)] Health care practitioner--One of the following individuals who is currently licensed and in good standing as indicated: [A registered nurse recognized as an advanced practice nurse by the Board of Nurse Examiners, a physician assistant licensed by the Texas Physician Assistant Board, or a midwife who has met licensing requirements and standards of the Texas Midwifery Board;]

(A) an advanced practice registered nurse licensed by the Texas Board of Nursing pursuant to Texas Occupations Code, Chapter 301;

(B) a physician assistant licensed by the Texas Physician Assistant Board pursuant to Texas Occupations Code, Chapter 204; or

(C) a midwife licensed by the Texas Midwifery Board pursuant to Texas Occupations Code, Chapter 203.

(8) Medicaid-eligible newborn--A patient whose mother is a Medicaid recipient or who is otherwise eligible for Medicaid coverage for the newborn-related services in accordance with Texas Human Resources Code, Chapter 32.

[(11) Heritable disease--An inherited disease that may result in mental or physical retardation or death;]

[(12) Hypothyroidism--A disorder, which if not treated, leads to mental and physical retardation;]

(9) [(43)] Newborn--A child through 30 days of age.

(10) Newborn Screening--One or more laboratory test(s) that identify an increased risk for phenylketonuria, other heritable diseases, hypothyroidism, and certain other disorders.

[(14) Newborn screen--One or more tests to identify a newborn who may be at risk of having phenylketonuria, other heritable diseases, or hypothyroidism;]

[(15) Organic acidemia--An inherited disorder, which if not treated, may cause mental retardation or death;]

(11) [(46)] Physician--A person licensed to practice medicine by the Texas Medical Board pursuant to Texas Occupations Code, Chapter 151.

(12) Specimen--A laboratory sample used for testing. The specimen used for newborn screening is capillary blood dried on specialized filter paper.

[(17) Provider--The hospital, birthing facility, health care practitioner, midwife, clinic, or laboratory that collects and submits the newborn screen blood specimen;]

[(18) Satisfactory specimen--A blood specimen obtained by uniform absorption of capillary blood onto a filter paper target such that the target is completely filled with blood and soaked through from back to front of the paper. The blood specimen must be completely dry before shipping and be submitted with the accurate and fully completed demographic information sheet;]

[(19) Screen--One or more tests that identify an increased risk for a disorder, which must be confirmed by diagnostic tests. A screen may produce false positive or false negative results and should not be relied upon as "diagnostic;"]

[(20) Sickling hemoglobinopathy, including sickle cell anemia, hemoglobin S/C disease, and sickle betathalassemia--An inherited disorder which, if not treated, may cause fatal infection and interrupted blood supply to vital organs;]

[(21) Specimen collection form--The specimen collection form consists of a patient demographic information sheet (original and carbonless copy) with an attached filter paper collection device;]

(13) [(22)] Specimen collection kit--A [single] department-approved, bar-coded, newborn screening specimen collection kit obtained from the department and consists of a parental information sheet; Parental Decision for Storage and Use of Newborn Screening Blood Spot Cards form; customized specimen collection device; [quality controlled filter paper collection device;] demographic information sheet;[-] and specimen collection directions applicable to the collection and submission of a newborn's blood specimen for the first, second, or repeat newborn screening test. [envelope which may be used to submit a newborn's blood specimen for the first or second screen; repeat or follow-up testing;]

§37.53. *Disorders for Which Blood Specimen Screening is Performed [Newborn Screens Are Required].*

Newborn screening in Texas includes the disorders found on the national Recommended Uniform Screening Panel for which funds are available and allocated for the screening. For a complete list of the disorders the State of Texas screens for at any given time, go to "General Information on Newborn Screening" at <http://www.dshs.state.tx.us/newborn>.

[Except as permitted in §37.54 of this title (relating to Exemption from Screens), all newborns delivered in Texas shall receive two screens for the following disorders:]

[(1) galactose-1-phosphate uridylyltransferase deficiency;]

[(2) sickling hemoglobinopathies;]

[(3) 21-hydroxylase deficiency;]

[(4) hypothyroidism;]

[(5) amino acid disorders, including argininosuccinic acidemia, citrullinemia, homocystinuria, maple syrup urine disease, phenylketonuria, and tyrosinemia type I;]

[(6) fatty acid oxidation disorders, including carnitine uptake defect, long-chain hydroxyacyl-CoA dehydrogenase deficiency, medium-chain acyl-CoA dehydrogenase deficiency, trifunctional protein deficiency, and very-long-chain acyl-CoA dehydrogenase deficiency;]

[(7) organic acidemias, including 3-methylcrotonyl-CoA carboxylase deficiency, beta-ketothiolase deficiency, glutaric acidemia type I, hydroxymethylglutaric aciduria, isovaleric acidemia, methylmalonic acidemia (Cbl A and Cbl B forms), methylmalonic acidemia (mutase deficiency form), multiple carboxylase deficiency, and propionic acidemia; and]

[(8) biotinidase deficiency.]

§37.54. Newborn Screening Exemption [from Screens].

The newborn screening tests referenced in §37.53 of this title (relating to Disorders for Which Blood Specimen Screening is Performed) are not required for a newborn child whose parent, managing conservator, or legal guardian objects on the ground that the tests conflict with the religious tenets or practices of an organized church of which they are adherents. The objection of the parent, managing conservator, or legal guardian to the screening tests shall be entered into the medical record of the child by the physician (or other person attending a newborn, if no physician is present). The parent, managing conservator, or legal guardian must sign the entry in order for the exemption to be valid.

[A newborn may not be screened if the parent, managing conservator, or guardian objects to the screens because the screens conflict with the religious tenets or practices of the parent, managing conservator, or guardian.]

§37.55. Newborn Screening Specimen Collection Kits.

(a) Purpose. This section establishes procedures for the obtaining, and subsequent submission of, newborn screening specimen collection kits provided by the department.

(b) Specimen collection kits.

(1) The requestor will estimate and submit to the department a written order, using forms designated by the department, for newborn screening specimen collection kits. The estimate should be based on the requestor's previous usage. A requestor shall provide further information to the department, upon request, to verify the appropriateness of the number of specimen collection kits ordered.

(A) The department will provide specimen collection kits for Medicaid-eligible, CHIP-eligible, or charity care newborns at no cost. The no-cost specimen collection kit should only be used for a Medicaid-eligible, CHIP-eligible or charity care newborn, and the submitter must affirm this on the specimen collection kit request form.

(B) The department will provide specimen collection kits for all other newborns at a fee described in §73.54(a)(1)(A)(i) of this title (relating to Fee Schedule for Clinical Testing and Newborn Screening).

(2) The department reserves the right to adjust the quantity of kits provided for an order based on factors such as the requestor's past orders, submission rates, and the availability of kits.

(3) The department will bill the requestor for specimen collection kits. Payment is due within 90 days from the statement date.

(4) The department will accept only its approved specimen collection kits for submission of specimens.

(5) Each time newborn screening samples are collected from the child, the physician (or other person attending a newborn, if no physician is present) shall ensure that the parent, managing conservator, or legal guardian is given the department's information on newborn screening, including the Texas Newborn Screening Parent Information form, and the Parental Decision for Storage and Use of Newborn Screening Blood Spot Cards form. The physician (or other person attending a newborn, if no physician is present) shall verify the information was distributed to the parent, managing conservator, or legal guardian by checking the appropriate box on the demographic information sheet, which must be included with the blood specimen when the kit is submitted to the department for testing. The physician (or other person attending a newborn, if no physician is present) must also include the signed Parental Decision for Storage and Use of Newborn Screening Blood Spot Cards form, if the parent signs the form at that time. If the signed form is presented to the physician (or other person attending a newborn, if no physician is present) at any other time, it must be submitted to the department at that time.

(6) Returned specimen collection kits: if the purchaser believes a kit(s) is defective, purchaser should immediately contact the department's laboratory in Austin. Kit(s) which are verified to be defective by the department can be returned for credit for future kit orders, as directed by the department.

§37.56. Responsibilities of the Physician (or Other Person Attending a Newborn, if No Physician is Present) and Collection of First and Second Specimen.

(a) A physician (or other person attending a newborn, if no physician is present) shall obtain a capillary blood specimen from the newborn and submit those specimens, all in accordance with instructions in §37.55 of this title (relating to Newborn Screening Specimen Collection Kits) and further instructions provided on and with the specimen collection.

(b) A capillary blood specimen shall be collected by absorbing the blood onto target circles on a specialized filter paper collection device. Other body fluids or blood from the placenta, umbilical cord, or mother are not acceptable.

(c) The blood specimen is to be obtained by the physician (or other person attending the newborn, if no physician is present) after 24 hours of age and before 48 hours of age. If the newborn is discharged from the hospital or birthing facility before the above criteria are met, the blood specimen must be obtained immediately prior to discharge. A second blood specimen is to be collected between one and two weeks of age in accordance with this section.

(1) If program data and/or other available information demonstrate to the department's satisfaction that the second screening is no longer necessary, the commissioner may remove the second screening from the Texas Newborn Screening Program.

(2) The commissioner's decision would be announced through means deemed appropriate by the commissioner to notify physicians, other health care practitioners, and other interested persons. Prior to the effective date of the announced change, the department's newborn screening educational information will be revised to reflect this program change.

(d) A repeat blood specimen shall be obtained as instructed by the program to verify results, or if the initial blood specimen was unsatisfactory.

(e) Transfusions can cause invalid results. The first screening should be collected prior to the first transfusion, if possible.

(1) If collected prior to the transfusion, specimen collection should proceed as described in subsection (c) of this section;

(2) If not collected prior to transfusion, a total of three specimens should be obtained. The first and second screen should be obtained as referenced in subsection (c) of this section. The third specimen should be collected 90 days after the date of transfusion.

(f) Blood specimens must air-dry on a flat surface for at least four hours and must be mailed to the department within 24 hours after collection. Directions for handling blood specimens must be strictly followed to avoid cross-contamination.

(g) A physician (or other person attending a newborn, if no physician is present), shall ensure that:

(1) the identifying and demographic information sheet is complete and accurate when submitted to the department;

(2) identifying information shall include contact information for the newborn's physician or health care practitioner to ensure ability to contact the physician or health care practitioner in case of abnormal screening results;

(3) parents receive the Texas Newborn Screening Parent Information form, and the Parental Decision for Storage and Use of Newborn Screening Blood Spot Cards form;

(4) the box on the patient demographic information form is checked, and verifying information and decision forms were provided to a parent, managing conservator, or legal guardian; and

(5) the Parental Decision for Storage and Use of Newborn Screening Blood Spot Cards form is promptly sent to the department upon being signed, and received from a parent, managing conservator, or legal guardian.

§37.57. Screening Procedures To Be Used.

Newborn screening laboratory analyses [Analysis] of [the] blood specimens for the screenings [required screens] must be performed by the department or the department's [department] designee. The department or the department's [department] designee is responsible for identifying and implementing proper laboratory procedures for the screening tests referenced [screens required] in §37.53 of this title (relating to Disorders for Which Blood Specimen Screening is Performed [Screens Are Required]).

(1) The analyses [analysis] of first [initial blood specimens] and any subsequent [the analysis of the follow-up] blood specimens are included in these responsibilities.

(2) The criteria for referring a newborn with an abnormal screen are dependent upon the laboratory procedures employed by the department or the department's designee in performing the analysis of the blood specimens. Therefore, the department is responsible for identifying and implementing the referral criteria based upon the laboratory procedures selected by the department for the analysis.

(3) Upon completion of the laboratory analyses, screening [determination by the department, laboratory] results shall be transmitted [mailed] to the person [provider] who submitted the blood specimen. The [and the] laboratory results are also [shall be] available to authorized persons by telephone and other electronic means. The department shall establish a written policy for communicating the laboratory results.

§37.58. Follow-up, Reporting, and Record Keeping on Abnormal Screening Results and Confirmed Cases [Screens].

(a) The department shall make notification of abnormal screening results as specified in Texas Health and Safety Code, §33.014(a). The department maintains [maintain] an active system of follow-up for those [suspected] cases [of each disorder for which

screens are required]. The department will provide recommendations for clinical confirmation following abnormal screening results.

(b) The department may request local health [Health] authorities and/or [public health departments, public health districts, and] the designated staff in the department's health service regions to [may] provide follow-up and other appropriate [needed] assistance for individuals at risk from the disorders referenced in §37.53 of this title (relating to Disorders for Which Blood Specimen Screening is Performed) [for which screens are required as requested by the department].

(c) The person [provider] submitting the newborn screening specimen may [shall] assist the department with follow-up of individuals at risk for the disorders referenced [listed] in §37.53 of this title [relating to Disorders for Which Newborn Screens are Required].

(d) The department will identify pediatric specialists in the state who are available to provide consultation to physicians and other [of] health care practitioners regarding the diagnosis and management of newborns with abnormal screening results [screens]. If a screening test indicates that a newborn child is at high risk, department program [Newborn Screening Program] staff will [shall] provide the physician, or other health care practitioner if the infant does not have a physician, with the names of appropriate consultants in the infant's [health care practitioner's] geographic area. The program may provide information about abnormal screening results to the pediatric specialists who cooperate [consult] with the department as part of the department's activities under this subchapter.

(e) Each physician, local health authority, or other individual [Physicians or health care practitioners] shall report to the department all confirmed cases of the disorders referenced in §37.53 of this title within 30 days of obtaining such information [for which required screens are performed that have been detected by other mechanisms].

(f) The department will collect and compile [epidemiologic data from] information it receives under this subchapter [in the specimen collection kits] and from other sources to derive incidence/prevalence rates for the disorders referenced in §37.53 of this title [for which screens are required]. The data may enable the department to identify high-risk population groups, with the ultimate goal of preventing severe sequelae of the disorders.

(g) The department may follow up with a confirmed case through periodic data collection from the physician and/or other [of] health care practitioner and/or [of] parent, managing conservator, or legal guardian.

(h) The department shall maintain a registry of children born in Texas who have been diagnosed as having one of the disorders referenced in §37.53 of this title, as required by Texas Health and Safety Code, §33.015(c) [for which screens are required].

§37.59. Coordination With [with] Children With Special Health Care Needs Services Program.

(a) All newborns and other individuals under the age of 21 years who have an abnormal screening [screen] may be referred, if financially eligible, to the department's Children with [With] Special Health Care Needs (CSHCN) Services Program.

(b) An individual who is determined to be eligible for the CSHCN Services Program will [services shall] be given approved services through that program, including special dietary formula, unless access to CSHCN Services Program health care benefits is restricted according to §38.16 of this title (relating to Procedures to Address [CSHCN Services] Program Budget Alignment). An individual who does not meet CSHCN Services Program's eligibility criteria will [shall] be referred to the department's Newborn Screening Program Benefits staff for a determination of eligibility for that program's

[program] benefits, as referenced in §37.60 of this title (relating to Newborn Screening Program Benefits).

§37.60. *Newborn Screening Program Benefits.*

In cooperation with the individual's physician or other health care practitioner and within the limits of funds budgeted by the department [appropriated by the legislature] for this purpose, the program will [Newborn Screening Program shall] provide benefits such as dietary supplements, medications, vitamins, low-protein foods, [confirmatory testing] and follow-up care at no cost or reduced cost to individuals approved for program benefits who have a disorder detected through the program, and confirmed with appropriate diagnostic tests, that have been interpreted by a physician recognized by the department as a specialist in the applicable disorder(s) as referenced in §37.53 of this title (relating to Disorders for Which Blood Specimen Screening is Performed). Program benefits also include coverage for confirmatory testing of individuals who have a presumptive disorder, from the list of disorders referenced in §37.53 of this title. These program benefits will be prioritized among eligible individuals in the following order: [metabolic diseases. Dependent on available funding, program benefits will be limited to specific populations of individuals diagnosed with an inheritable disorder included in those screened by the department and whose income is at or below 350% of the federal poverty income guideline. Dependent on available funding, program benefits will be available to the following populations in this order:]

- (1) children 0-2 years of age;
- (2) children 3-5 years of age;
- (3) children 6-21 years of age;
- (4) pregnant women;
- (5) women of child bearing age; and
- (6) other adults [(female or male)].

§37.61. *Eligibility Requirements for the Newborn Screening Program Benefits.*

(a) Except as otherwise provided in this subchapter [these sections], to be eligible to receive the benefits from the program referenced in §37.60 of this title (relating to Newborn Screening Program Benefits) [Newborn Screening Program], an individual must:

(1) have an abnormal screening result (pending confirmation of diagnosis), or a confirmed diagnosis of a disorder screened by the program as referenced in §37.53 of this title (relating to Disorders for Which Blood Specimen Screening is Performed);

(2) (No change.)

(3) have a family income that is at or below 350% of the federal poverty income [within the financial] guidelines [set by these sections];

(4) if required, make financial participation payments in a timely manner;

(5) as directed by [upon request from] the program, provide current [updated] medical, financial, and residency information and/or documentation in a timely manner; and

(6) have a parent, managing conservator, or legal guardian agree to abide by the requirements in this subchapter [these sections] if the individual is a minor.

(b) An individual is not eligible to receive the benefits described in §37.60 of this title if [from the program at no cost or reduced cost to the extent that] the individual or the parent, managing

conservator, or legal guardian [other person with a legal obligation to support the individual] is eligible for some other benefit, such as Medicaid, CSHCN Services Program, CHIP, [Children With Special Health Care Needs (CSHCN), Children's Health Insurance Plan (CHIP)] or private insurance, that would pay for all or part of the services in question.

§37.62. *Application Process for the Newborn Screening Program Benefits.*

(a) To be considered for program [newborn screening] benefits described in §37.60 of this title (relating to Newborn Screening Program Benefits), a complete application [for admission to the program] must be filed annually (according to the deadlines provided by the department) with the program by mailing to the following address: Newborn Screening [Program, Health Screening and Case Management] Unit, Mail Code 1918, Department of State Health Services, P.O. Box 149347 Austin, Texas 78714-9347 [1100 West 49th Street, Austin, Texas 78756].

(b) The application must be signed by one of the following as appropriate:

(1) (No change.)

(2) the parent, managing conservator, or legal guardian of a minor seeking services; or

(3) the legal guardian of an adult seeking services under a temporary, limited or general guardianship.

(c) (No change.)

(d) A complete application [for newborn screening benefits] shall consist of the following:

(1) (No change.)

(2) a statement from the individual or, if the individual is a minor, from the individual's parent, managing conservator, or legal guardian that the individual is a bona fide resident of the state. If [and if] requested by the program [Newborn Screening Program], the applicant must also submit documentation of residency status, and proof of income as established in the department's program benefits [Newborn Screening Program] policy; and

(3) information, as requested by the department, on any other benefit to which the applicant, recipient, or person with a legal obligation to support the applicant or recipient may be entitled.

(e) An application shall be deemed incomplete for any one of the following reasons:

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

(3) failure to provide documentary evidence requested by the program, including documentation to verify residency or financial data; and/or [or]

(4) lack of, or improper, signatures.

(f) Following review, an [An] application will be [reviewed and will be]:

(1) (No change.)

(2) returned, if incomplete, with the deficiencies noted to the individual, or if the individual is a minor or a ward, to the individual's parent [parent(s)], managing conservator [conservator(s)], or legal guardian as is appropriate, for completion and resubmission; or

(3) approved if all criteria are met to the department's satisfaction.

(g) An individual's eligibility date is ~~shall be considered to be~~ the date on which the program determines that the application is ~~substantially~~ complete.

§37.63. Denial of Application, and~~;~~ Modification, Suspension, or Termination of Newborn Screening Program Benefits.

(a) An individual applying for or receiving benefits described in §37.60 of this title (relating to Newborn Screening Program Benefits) ~~from the Newborn Screening Program~~ may have his/her application denied or his/her benefits modified, suspended, or terminated for any of the following reasons:~~[-]~~

(1) ~~[Benefits may be denied, modified, suspended, or terminated if:]~~

~~[(A)]~~ the individual does not have a confirmed diagnosis of a disorder screened by the ~~[for which]~~ program, as referenced in §37.53 of this title (relating to Disorders for Which Blood Specimen Screening is Performed), for which benefits are available (including confirmatory testing);

(2) ~~[(B)]~~ the individual is not a bona fide resident of the state;

(3) ~~[(C)]~~ the individual fails or refuses to provide the ~~[periodic]~~ information [regarding residency and financial status when] requested by the program (e.g., regarding residency, financial status, eligibility for other benefits);~~[-]~~

~~[(2)]~~ Benefits may be denied, modified, suspended, or terminated if:

(4) ~~[(A)]~~ the individual submits an application form, or any document required in support of the application or continued participation in the program, which contains an intentional misstatement of fact which is material to the program's determination that the individual is eligible for program benefits; ~~[or]~~

(5) ~~[(B)]~~ exhaustion of budgeted program funds, prioritized as required under §37.60 of this title ~~[are curtailed]~~.

(b) An individual applying for or receiving benefits under §37.60 of this title ~~from the Newborn Screening Program~~ may not appeal or request an administrative hearing concerning adjustments made by the program regarding ~~[in poverty income guidelines to conform to federal poverty income guidelines or adjustments in]~~ the type and amount of program benefits available when such adjustments are necessary to conform to budgetary limitations.

(c) ~~[(1)]~~ An individual applying for ~~[program]~~ benefits will be notified in writing if the individual's ~~[their]~~ application is ~~[has been]~~ denied. The notification will state ~~[outline]~~ the reasons for denial.

(d) ~~[(2)]~~ An individual receiving ~~[newborn screening]~~ benefits will be notified ~~[if the benefits are to be modified, suspended, or terminated. Notification will be]~~ by certified mail to the most recent address known to the program if the benefits are to be modified, suspended, or terminated. The program will state the reasons for the proposed action.

(e) Prior to making a final decision adverse to an affected individual, the program shall give the affected individual written notice of an opportunity for a hearing on the proposed action. The notice shall contain:

(1) a statement of the action the department intends to take;

(2) an explanation of the reasons for the action the department intends to take;

(3) a reference to the statutory and regulatory authority supporting the intended action;

(4) an explanation of the affected person's right to request a hearing; and

(5) the procedure by which an affected person may request a hearing.

(f) The affected individual has 20 days after receiving the notice to request a hearing on the proposed action. It is a rebuttable presumption that a notice is received five days after the date of the notice. Unless the notice letter specifies an alternative method, a request for a hearing shall be made in writing, and mailed or hand-delivered to the program at the following address: Newborn Screening Unit, Mail Code 1918, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347. If an individual who is offered the opportunity for a hearing does not request a hearing within the prescribed time for making such a request, the individual is deemed to have waived the hearing and the action may be taken.

~~[(3)]~~ Within 30 days after receiving notice as specified in paragraph (2) of this subsection, the individual, or if the individual is a minor, the individual's parent, managing conservator, or guardian, may appeal the program's decision to deny, suspend, modify, or terminate the services to the department and request an administrative hearing before the department. Appeals and request for hearings must be in writing and sent to the following address by certified mail: Newborn Screening Program, Health Screening and Case Management Unit, Mail Code 1918, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756. Failure to respond will be deemed a waiver of the appeal and of the opportunity for a hearing.

(g) ~~[(4)]~~ Appeals and administrative hearings will be conducted in accordance with the department's fair hearing rules at §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

§37.64. Newborn Screening Advisory Committee ~~[Bodies and Task Forces]~~.

The scope of matters on which the Newborn Screening Advisory Committee may legally submit recommendations to the department is as follows:

(1) potential additional newborn screening tests under Texas Health and Safety Code, §33.011(a-1) for other disorders or conditions listed under the Recommended Uniform Newborn Screening Panel, or another report determined by the department to provide more stringent newborn screening guidelines to protect the health and welfare of this state's newborns;

(2) matters regarding strategic planning, policy, rules, and services related to newborn screening and additional newborn screening tests; and

(3) the scope is limited under Texas Health and Safety Code, §33.011(c) to those tests that are or would be performed by the laboratory established by the department or by a laboratory approved by the department under Texas Health and Safety Code, §33.016.

~~[The commissioner may appoint both technical and lay advisory committees to assist in the administration of the Newborn Screening Program. The commissioner may also convene special task forces to assist the program and advisory committees with technical expertise or to address special emotional, social, educational, financial, or other problems which arise in families having a family member with a confirmed diagnosis of phenylketonuria, other heritable disease, or hypothyroidism.]~~

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 June 24, 2013.

TRD-201302678

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: August 4, 2013

For further information, please call: (512) 776-6972



25 TAC §§37.55, 37.56, 37.65

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

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §33.002, which requires the department to adopt rules necessary to carry out the program, and by Chapter 33 in general; and Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The repeals affect Texas Health and Safety Code, Chapters 33 and 1001; and Government Code, Chapter 531.

§37.55. *Responsibilities of Providers and Parent, Managing Conservator, or Guardian.*

§37.56. *Blood Specimen Collection for Required Screens.*

§37.65. *Confidentiality of Information.*

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 June 24, 2013.

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Lisa Hernandez

General Counsel

Department of State Health Services

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CHAPTER 73. LABORATORIES

25 TAC §73.21

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of State Health Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §73.21, concerning the Newborn Screening Program.

BACKGROUND AND PURPOSE

The department administers the Newborn Screening Program, which is designed to screen all newborns in the state for certain

genetic or heritable disorders. If identified and treated early, serious problems such as developmental delays, intellectual disability, illness, or death can be prevented or ameliorated. The program is structured into two major components. The department's laboratory receives the blood specimens collected from newborns, performs the testing, and reports the results to submitters of the specimens. If the results for one of the laboratory tests are out of the expected range, the results are received by the clinical care coordination staff in the Newborn Screening Program for prompt follow up and intervention. Limited benefits are then potentially available to eligible individuals. Benefits include confirmatory testing, medications, vitamins, and dietary supplements (metabolic foods, low-protein foods). The amendments to 25 TAC Chapter 37, which are proposed in this issue of the *Texas Register*, apply to the operations of both of these two main components of the Newborn Screening Program.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Section 73.21 has been reviewed and the department has determined that §73.21 should be repealed and moved into 25 TAC Chapter 37.

SECTION-BY-SECTION SUMMARY

Section 73.21, related to laboratory specimen submission for newborn screening, is proposed for repeal and the content will be moved to proposed new 25 TAC §37.55, with changes, so that program information can be located within one chapter instead of two chapters. Certain summary information regarding specimen collection kits from §73.21 has also been included in 25 TAC §37.51 and would specify that specimen collection kits are obtained from the department, and proposed new language would clarify that screening results are reported by the department as required by law.

FISCAL NOTE

Jann Melton-Kissel, Director, Specialized Health Services Section, has determined that for each year of the first five years that the repeal will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the repeal as proposed, other than greater efficiencies resulting from improved organization, clarity, readability and user-friendliness.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Jann Melton-Kissel has also determined that there should be no adverse economic impact on small businesses or micro-businesses required to comply with the repeal as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices, beyond what is already required by statute, in order to comply with the repeal.

REGULATORY FLEXIBILITY ANALYSIS

Government Code, Chapter 2006, was amended by the HB 3430, 80th Legislature, Regular Session, 2007, to require, as part of the rulemaking process, state agencies to prepare a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rules. There is an exception to this requirement, however. An agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small businesses, would not be protective of the "health, safety and environmental and economic welfare of the state." When the proposed rules are an implementation of legislative

directives because of statutory changes, that proposed rule language becomes *per se* consistent with the health, safety, or environmental and economic welfare of the state, and therefore the department need not consider alternative methodologies as part of the preamble small business impact analysis.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL GOVERNMENT

There are no anticipated costs to persons who are required to comply with the repeal as proposed. There is no fiscal impact to local employment.

PUBLIC BENEFIT

Jann Melton-Kissel has also determined that for each year of the first five years the repeal is in effect, the public will benefit from adoption of the repeal and amendments to 25 TAC Chapter 37. The public benefit anticipated as a result of enforcing or administering the sections is to improve how the state newborn screening program screens all Texas babies for certain heritable and other disorders and provides follow-up clinical care coordination services to those identified with an abnormal (out-of-range) screening result, by ensuring that confirmatory test(s) and treatment are received, if needed. The proposal will increase the efficiency of department operations and will increase the user-friendliness of the rules for stakeholders because of improved organization, clarity and readability. The new rules would provide for greater agency transparency in its processes and make agency actions more predictable for stakeholders. All of this would constitute a public benefit.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to David R. Martinez, Newborn Screening Unit, Specialized Health Services Section, Division of Family and Community Health Services, Department of State Health Services, Mail Code 1918, P.O. Box 149347, Austin, Texas 78714-9347 or by email at David.R.Martinez@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposal has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, §33.002, which requires the department to adopt rules necessary to carry out the program, and by Chapter 33 in general; and Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the section implements Government Code, §2001.039.

The repeal affects Health and Safety Code, Chapters 33 and 1001; and Government Code, Chapter 531.

§73.21. *Newborn Screening.*

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 June 21, 2013.

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6972



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 41. PRACTICE AND PROCEDURE

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes the repeal of §41.50, concerning Carrier's Address; §41.101, concerning Purpose; §41.105, concerning Definitions; §41.110, concerning Availability; §41.115, concerning Inspection; §41.120, concerning Duplication and Related Services; §41.125, concerning Duplicating Charges; §41.130, concerning Certified Copies; §41.135, concerning Subpoenas for Confidential Records; §41.140, concerning Record Checks; §41.150, concerning Publications; and §41.160, concerning Annual Review of Charges.

In accordance with Government Code §2001.039, the notice of proposed rule review of Chapter 41, Practice and Procedure, was published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2467) and no comments were received on the review. The adopted rule review of Chapter 41 was published in the July 29, 2011, issue of the *Texas Register* (36 TexReg 4819). Based on the recommendations of the review and for the reasons stated below the Division proposes the repeal of §§41.50, 41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160.

The Division proposes the repeal of §41.50 because it is redundant. Section 41.50 was adopted effective November 20, 1977 (2 TexReg 4315). It provides that unless otherwise approved by the board, all notices and communications to insurance carriers will be addressed to the carrier at an address designated by the

carrier as its Texas mailing address. 28 TAC §41.60, relating to Communication to Insurance Carriers, was adopted November 11, 1983 (8 TexReg 4491). Section 41.60 provides that unless otherwise required by statute or a board rule all notices and other communications to insurance carriers will be sent either to an address designated by the insurance carrier as its principal Texas mailing address or to its designated Austin representative. Section 41.50 is unnecessary since §41.60 is more comprehensive and also governs where communications are to be sent to insurance carriers. For these reasons, the Division proposes the repeal of §41.50.

The Division proposes the repeal of Subchapter B, Access to Board Records, §§41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160 which were adopted effective October 20, 1988 (13 TexReg 4979) because those sections are outdated and no longer necessary since other statutes and rules currently govern access to the records and information compiled by the Division. Sections 41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160 pertain to access to the Industrial Accident Board's records and the purpose of these rules was to ensure compliance with the Texas Civil Statutes, Article 8307, §9(a); and the Open Records Act, Texas Civil Statutes, Article 6252-17a. However, former Texas Civil Statutes, Article 8307 was repealed by Acts 1989, 71st Legislature, 2nd Called Session, Chapter 1 and the Texas Workers' Compensation Act was enacted under Article 8308-1.01 et. seq. and the name of the Industrial Accident Board was changed to the Texas Workers' Compensation Commission. Texas Civil Statutes, Article 8307, §9(a) was repealed and recodified as Texas Civil Statutes Article 8308-2.31 to 8308-2.34 and 8308-10.04. Then, Texas Civil Statutes Articles 8308-2.31 to 8308-2.34 and 8308-10.04 were repealed by Acts 1993, 73rd Legislature, Chapter 269, §5(2), effective September 1, 1993 and recodified in Labor Code §§402.083 - 402.088. The section titles for Labor Code §§402.083 - 402.088 have not changed and the statutes are currently in effect. Former Open Records Act, Texas Civil Statutes, Article 6252-17a was repealed by Acts 1993, 73rd Legislature, Chapter 268, §46(1), effective September 1, 1993 and recodified as Government Code Chapter 552, known as the Texas Public Information Act.

The issues addressed by §§41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160 that pertain to open records are currently addressed by Government Code Chapter 552, known as the Texas Public Information Act; Labor Code §§402.083 - 402.088; 1 TAC Chapter 63, concerning Public Information; 1 TAC Chapter 70, concerning Cost of Copies of Public Information; and 28 TAC §108.1, concerning Charges for Copies of Public Information. Every section of Chapter 41 proposed for repeal has a more recent statutory or regulatory analogue which articulates the law governing access to Division records and meetings. References to current regulations are provided in parenthesis. Labor Code §402.081(a) makes the Commissioner of Workers' Compensation the custodian of records and pertains to the provision of copies and certification of records (§41.105, Definitions and §41.130, Certified Copies). Labor Code §402.084 determines when the Division shall perform and release a record check and eligibility to receive confidential claim file information; Labor Code §402.085 contains the exceptions to confidentiality; Labor Code §402.087 contains information available to prospective employers; Labor Code §402.088 relates to the release of reports of prior injury; Labor Code §402.090 pertains to the release of sta-

tistical information; Labor Code §402.092 relates to confidential investigation files and the disclosure of certain information, and 1 TAC §63.2 pertains to requests for attorney general decisions regarding confidentiality (§41.110, Availability; §41.135, Subpoenas for Confidential Records; and §41.140, Record Checks). Labor Code §402.081(d) states reasonable fees can be billed for inspecting Division records that contain confidential information that must be redacted before the records can be made available, and Government Code §552.021 states that business hours should be the minimum hours when information must be public (§41.115, Inspection). 1 TAC Chapter 70 and 28 TAC §108.1 pertain to costs and charges for copies of public information (§41.120, Duplication and Related Services; §41.125, Duplicating Charges; and §41.160, Annual Review of Charges). Government Code §552.270 states charges for publications may be set by a governmental entity (§41.150 Publications). The Division proposes the repeal of §§41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160 because these rules are no longer necessary.

The requirements of Government Code Chapter 552, adoption of revisions to the Labor Code, new regulations by the Office of the Attorney General of Texas, and sufficient language in 28 TAC §41.60 renders 28 TAC §§41.50, 41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160 unnecessary. For these reasons the Division proposes the repeal of 28 TAC §§41.50, 41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160.

Brent Hatch, Director of Return to Work and Special Initiatives, has determined that, for the first five years after the repeal of these sections, there will be no fiscal implications for state or local government as a result of enforcing or administering this repeal; and there will be no effect on local employment or the local economy as result of this proposed repeal.

Mr. Hatch has also determined that, for each year of the first five years after the repeal of the sections, the public benefit anticipated as a result of the repeal will be clarity to the public and the elimination of obsolete administrative regulations. There will be no economic cost to any individuals or entities, regardless of size, as a result of this proposed repeal.

In accordance with the Government Code §2006.002(c), a Division analysis has determined that this proposed repeal will not have an adverse economic effect on small or micro businesses because it is simply a repeal of obsolete rules. Therefore, in accordance with the Government Code §2006.002(c), the Division is not required to prepare a regulatory flexibility analysis.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on August 5, 2013. Comments may be submitted via the internet through the Division's website at www.tdi.texas.gov/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.texas.gov or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after the close of comment will not be considered.

Any request for a public hearing should be submitted separately to the Office of the General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 on or before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

SUBCHAPTER A. COMMUNICATIONS

28 TAC §41.50

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance, Division of Workers' Compensation or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of §41.50 is proposed under Labor Code §402.00111 and §402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Title 5, Labor Code.

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

§41.50. *Carrier's Address.*

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

Filed with the Office of the Secretary of State on June 24, 2013.

TRD-201302669

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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For further information, please call: (512) 804-4703



SUBCHAPTER B. ACCESS TO BOARD RECORDS

28 TAC §§41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, 41.160

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

The repeal of §§41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160 is proposed under Labor Code §§402.00111, 402.061, 402.081(a) and (d), 402.083 - 402.088, 402.090, 402.092, and Government Code Chapter 552. Section 402.00111 requires that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.061 requires that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Title 5, Labor Code. Section 402.081(a) states that the Commissioner of Workers' Compensation is the custodian of the Division's records. Section 402.081(d) provides that reasonable fees can be billed for inspecting Division records and the fee for access to information under Government Code

Chapter 552 shall be in accord with the rules of the attorney general that prescribe the method for computing the charge for copies under that chapter. Section 402.083 requires that information in or derived from a claim file regarding an employee is confidential and may not be disclosed except as provided by law. Section 402.084 regulates when the Division shall perform and release a record check on an employee and claim file information, requires confidentiality, allows the Commissioner of Workers' Compensation to establish by rule a reasonable fee for information, requires adoption of rules for reasonable security parameters for all transfers of information requested under this section in electronic data format, and requires adoption of rules to establish requirements regarding the maintenance of electronic data in the possession of insurance carriers or their authorized representatives. Section 402.085 contains regulations regarding exceptions to confidentiality. Section 402.086 requires transfer of confidentiality of claim information except in certain circumstances. Section 402.087 regulates information available to prospective employers. Section 402.088 regulates the release of reports of prior injuries. Section 402.090 allows the Division, the Texas Department of Insurance, or any other governmental agency to prepare and release statistical information if the identity of an employee is not explicitly disclosed. Section 402.092 requires that investigation files compiled or maintained by the Division be confidential, states that they are not open records for purposes of Government Code Chapter 522, and provides exceptions to confidentiality. Government Code Chapter 552 contains the Texas Public Information Act.

The following statutes are affected by the proposal:

Section 41.101 - Labor Code §§402.083 - 402.088, Government Code Chapter 552, and 1 TAC Chapters 63 and 70;

Section 41.105 and §41.130 - Labor Code §402.081;

Sections 41.110, 41.135, and 41.140 - Labor Code §§402.084, 402.085, 402.087, 402.088, 402.090, and 402.092; and 1 TAC §63.2;

Section 41.115 - Labor Code §402.081 and Government Code §552.021;

Sections 41.120, 41.125, and 41.160 - 1 TAC Chapter 70 and §108.1; and

Section 41.150 - Government Code §552.270.

§41.101. *Purpose.*

§41.105. *Definitions.*

§41.110. *Availability.*

§41.115. *Inspection.*

§41.120. *Duplication and Related Services.*

§41.125. *Duplicating Charges.*

§41.130. *Certified Copies.*

§41.135. *Subpoenas for Confidential Records.*

§41.140. *Record Checks.*

§41.150. *Publications.*

§41.160. *Annual Review of Charges.*

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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Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4703



CHAPTER 43. INSURANCE COVERAGE

28 TAC §43.15, §43.20

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

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes the repeal of §43.15, concerning Sanctions; and §43.20, concerning Required Information to Insureds.

In accordance with Government Code §2001.039, the notice of proposed rule review of Chapter 43, Insurance Coverage, was published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5415). In this notice, the Division reviewed and considered all the sections in Chapter 43 for readoption, revision, or repeal. The adopted rule review of Chapter 43 was published in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1519). The Division determined that the reasons for adoption of §43.15 and §43.20 do not continue to exist and declined to readopt those sections. No written comments were received regarding the review of its rules.

The Division proposes the repeal of §43.15 because it is outdated and unnecessary. Other statutes and rules currently govern insurance carrier notice requirements and administrative violations against insurance carriers, such as Labor Code §406.006, relating to Insurance Coverage and Claim Administration Reporting Requirements; Administrative Violation, and 28 TAC §110.1, relating to Requirements for Notifying the Commission of Insurance Coverage. Section 43.15 was adopted effective November 11, 1983 (8 TexReg 4492). It provides for sanctions against insurance carriers for failing to file notice with the Industrial Accident Board that an employer has become a subscriber and provides procedures for the imposition of a penalty by the Industrial Accident Board. The Texas Workers' Compensation Act was enacted under Texas Civil Statutes, Article 8308-1.01 et. seq. and the name of the Industrial Accident Board was changed to the Texas Workers' Compensation Commission. In House Bill 7, the 79th Legislature, Regular Session, abolished the Texas Workers' Compensation Commission and established the Division of Workers' Compensation within the Texas Department of Insurance effective September 1, 2005.

The Division proposes the repeal of §43.20 because it is unnecessary. Section 43.20 was adopted effective October 17, 1989 (14 TexReg 5259). It provides that, except as otherwise provided, no later than August 1 of each year a workers' compensation insurance carrier shall provide each insured with written information regarding the insured's rights and responsibilities under the workers' compensation laws. This section also requires that information required by the Industrial Accident Board be included, that the document shall be filed with the board no later

than August 1, and that in 1989 the date for providing the required information in this section shall be December 1. Section 43.20(b) is unnecessary because on November 10, 1989, the Industrial Accident Board posted its notice of non-enforcement of §43.20(b) in the *Texas Register* (14 TexReg 5960). Section 43.20(a) is unnecessary because on October 2, 1990 the Texas Workers' Compensation Commission posted its notice of non-enforcement of §43.20(a) in the *Texas Register* (15 TexReg 5820).

For these reasons the Division proposes the repeal of 28 TAC §43.15 and §43.20.

Brent Hatch, Director of Return to Work and Special Initiatives, has determined that, for the first five years after the repeal of these sections, there will be no fiscal implications for state or local government as a result of enforcing or administering this repeal; and there will be no effect on local employment or the local economy as result of this proposed repeal.

Mr. Hatch has also determined that, for each year of the first five years after the repeal of the sections, the public benefit anticipated as a result of the repeal will be clarity to the public and the elimination of obsolete administrative regulations. There will be no economic cost to any individuals or entities, regardless of size, as a result of this proposed repeal.

In accordance with the Government Code §2006.002(c), the Division has determined that this proposed repeal will not have an adverse economic effect on small or micro businesses because it is simply a repeal of obsolete rules. Therefore, in accordance with the Government Code §2006.002(c), the Division is not required to prepare a regulatory flexibility analysis.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on August 5, 2013. Comments may be submitted via the internet through the Division's website at www.tdi.texas.gov/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.texas.gov or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after the close of comment will not be considered.

Any request for a public hearing should be submitted separately to the Office of the General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 on or before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The repeal of §43.15 and §43.20 is proposed under Labor Code §402.00111 and §402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Title 5, Labor Code.

The following statutes are affected by this proposal:

Section 43.15 - Labor Code §§406.006, 406.012, and 415.021; 28 TAC §110.1 and Chapter 180; and

Section 43.20 - None.

§43.15. *Sanctions.*

§43.20. *Required Information to Insureds.*

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

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Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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For further information, please call: (512) 804-4703



CHAPTER 89. CRIME VICTIMS COMPENSATION ACT

28 TAC §§89.5, 89.10, 89.15, 89.20, 89.25, 89.30, 89.35, 89.40, 89.45, 89.50, 89.55, 89.60, 89.65, 89.70, 89.75, 89.80, 89.85, 89.90, 89.95, 89.100, 89.105, 89.110, 89.115, 89.120, 89.125, 89.130, 89.135, 89.140, 89.145, 89.150, 89.155, 89.160, 89.165, 89.170, 89.175

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

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes the repeal of §§89.5, 89.10, 89.15, 89.20, 89.25, 89.30, 89.35, 89.40, 89.45, 89.50, 89.55, 89.60, 89.65, 89.70, 89.75, 89.80, 89.85, 89.90, 89.95, 89.100, 89.105, 89.110, 89.115, 89.120, 89.125, 89.130, 89.135, 89.140, 89.145, 89.150, 89.155, 89.160, 89.165, 89.170, and 89.175, relating to the Crime Victims Compensation Act. The repeal of these rules is proposed because the rules are superseded by Senate Bill 616 (SB 616), enacted by the 72nd Legislature, Regular Session, effective September 1, 1991.

The Office of the Attorney General of Texas adopted rules on December 15, 2002 (27 TexReg 11513) to administer this program in 1 TAC Part 3, Chapter 61 (relating to Crime Victims' Compensation).

Since Chapter 89 is obsolete, the Division proposes the repeal of this chapter.

Brent Hatch, Director of Return to Work and Special Initiatives, has determined that, for the first five years after the repeal of these sections, there will be no fiscal implications for state or local government as a result of enforcing or administering this repeal; and there will be no effect on local employment or the local economy as result of this proposed repeal.

Mr. Hatch has also determined that, for each year of the first five years after the repeal of the sections, the public benefit anticipated as a result of the repeal will be elimination of obsolete regulations and conformance of existing rules to the statutes. There will be no economic cost to any individuals, or insurers or

other entities regulated by the Division, regardless of size, as a result of the proposed repeal. Any changing cost is directly attributable to statutory changes.

As required by the Government Code §2006.002(c), the Division has determined that the proposal will not have an adverse economic effect on small or micro-business insurance carriers because it is simply the repeal of obsolete rules. Therefore, in accordance with the Government Code §2006.002(c), the Division is not required to prepare a regulatory flexibility analysis.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on August 5, 2013. Comments may be submitted via the internet through the Division's website at www.tdi.texas.gov/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.texas.gov or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after the close of comment will not be considered.

A request for a public hearing must be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. CST by the close of the comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The repeal is proposed under the Labor Code §402.00111 which provides that the Commissioner of Worker's Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Title 5, Labor Code.

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

§89.5. *Compliance and Suspension of Rules.*

§89.10. *Social Security Number.*

§89.15. *General Communications.*

§89.20. *Claimant's Address.*

§89.25. *Reporting the Crime.*

§89.30. *Filing of Application.*

§89.35. *Loss of Earnings.*

§89.40. *Readily Available.*

§89.45. *Medical Reports.*

§89.50. *Board Ordered Exams.*

§89.55. *Payment of Bills.*

§89.60. *Funeral Bills.*

§89.65. *Autopsy Report.*

§89.70. *Certificate of Death.*

§89.75. *Care of Minor Children.*

§89.80. *Lump Sum Payments.*

§89.85. *Insufficient Funds.*

§89.90. *Continuing Jurisdiction.*

§89.95. *Emergency Awards.*

§89.100. *Review of Award.*

§89.105. *Request for Hearing.*

- §89.110. *Suspended Payments.*
- §89.115. *Subrogation.*
- §89.120. *Filing Suit.*
- §89.125. *Compensation Recovered.*
- §89.130. *Attorney's Fees.*
- §89.135. *Will and Trust Instruments.*
- §89.140. *Practicing Before the Board.*
- §89.145. *Other Persons.*
- §89.150. *Texas Residents.*
- §89.155. *Interested Persons.*
- §89.160. *Lacked Capacity to Commit the Crime.*
- §89.165. *Reports.*
- §89.170. *Accomplice.*
- §89.175. *Victim's Compliance Necessary.*

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 June 24, 2013.

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Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: August 4, 2013

For further information, please call: (512) 804-4703



CHAPTER 102. PRACTICES AND PROCEDURES--GENERAL PROVISIONS

28 TAC §102.8

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes amendments to §102.8, relating to Information Requested on Written Communications to the Commission. This proposal clarifies a Division review of its rules to identify rules that are obsolete. The Division proposes to amend §102.8 by deleting subsection (b). This proposal is also intended to make nonsubstantive changes to §102.8 that update terminology and delete provisions that are obsolete.

The Division proposes amendments to the title of the section and subsection (a) that change references from "Commission" to "division." These proposed amendments are necessary to reflect the proper name for the agency.

The Division also proposes the deletion of §102.8(b) and relettering the subsequent subsection accordingly. Section 102.8(b) requires written communications involving medical issues to also provide the information required by §133.1 of this title (relating to Information Required in Communication). The version of §133.1 referenced in this rule required written communications from health care providers to contain specified information. This version of §133.1 was repealed effective July 15, 2000 (25 TexReg 2115). Thus, the deletion of §102.8(b) is necessary in order to remove an obsolete provision from Division rules.

The Division also proposes adding the acronym (EDI) after Electronic Data Interchange in the subsequent subsection to update the nomenclature.

Brent Hatch, Director of Return to Work and Special Initiatives, has determined that, for the first five years the amendments to

this section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments, and there will be no effect on local employment or the local economy as result of the amendments.

Mr. Hatch has also determined that, for each year of the first five years the amendments to this section will be in effect, the public benefit anticipated as a result of the amendments will be updated terminology and the elimination of obsolete regulations. There will be no economic cost to any individuals, insurers, or other Division-regulated entities, regardless of size, as a result of the proposed amendments.

In accordance with the Government Code §2006.002(c), a Division analysis has determined that the proposed amendments will not have an adverse economic effect on small or micro business because the amendments simply update terminology and remove obsolete regulations. Therefore, in accordance with the Government Code §2006.002(c), the Division is not required to prepare a regulatory flexibility analysis.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on August 5, 2013. Comments may be submitted via the Internet through the Division's Internet website at <http://www.tdi.texas.gov/wc/rules/proposedrules/index.html>, by email at rulecomments@tdi.texas.gov or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

Any request for a public hearing should be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Office of the General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under Labor Code §§401.024, 402.00111, 402.061 and 414.004. Section 401.024 provides the Division the authority to require use of facsimile or other electronic means to transmit information in the system. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act. Section 414.004 requires insurance carriers to make available any records or other necessary information.

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

§102.8. Information Requested on Written Communications to the Division [Commission].

(a) Unless the division [Commission] prescribed form, format, or manner of a written communication specifies otherwise, all written communications to the division [Commission] regarding an injured employee [worker] or claim for benefits shall include the following information, if known:

(1) the injured employee's [~~worker's~~] full name, date of injury, address, and social security number. If no social security number has been assigned, insert the numerical digits "999" followed by the claimant's birth date or if unknown, the claimant's date of injury, listed by the month, day, and year (MMDDYY); use of "999" shall not be used in place of a valid social security number in order to meet timeliness of reporting requirements.

(2) the name and address of the claimant, if other than the injured employee [~~worker~~];

(3) the workers' compensation number assigned to the claim by the division [~~Commission~~];

(4) the employer's name and address;

(5) the employer's Federal Employer's Identification Number (FEIN);

(6) the insurance carrier's name;

(7) the insurance carrier's policy number; and

(8) the insurance carrier's claim number.

~~[(b) Written communications involving medical issues shall also provide the information required by §133.1 of this title (relating to Information Required in Communications).]~~

~~[(e)]~~ Written communications filed by Electronic Data Interchange (EDI) pursuant to §124.2 of this title (relating to Carrier Reporting and Notification Requirements) must include all mandatory data elements and all applicable conditional data elements required by the International Association of Industrial Accident Boards and Commissions (IAIABC) and Texas EDI Implementation Guides.

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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Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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For further information, please call: (512) 804-4703



CHAPTER 103. AGENCY ADMINISTRATION

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes the repeal of Chapter 103, Subchapter A, §§103.1 - 103.3 and §103.100; Subchapter B, §103.101; Subchapter C, §§103.300 - 103.322; and Subchapter D, §103.400, relating to Agency Administration.

In accordance with Government Code §2001.039, Chapter 103 was subject to a rule review published in the *Texas Register* (32 TexReg 5035). In this notice, the Division reviewed and considered all the sections in Chapter 103 for reoption, revision, or repeal. The finding of the review was that repeal is necessary because the rules in Chapter 103 are duplicative and unnecessary. In House Bill 7, the 79th Legislature, Regular Session, abolished the Texas Workers' Compensation Commission and established the Division of Workers' Compensation within the Texas Department of Insurance effective September 1, 2005. Since then the Department, in accordance with §402.00113 (Administrative Attachment to Department), has provided the facilities and staff

necessary to allow the Division to perform administrative duties outlined in Chapter 103, including administrative assistance and services; personnel and financial services; and computer equipment and support. The Department's administrative rules are outlined in 28 TAC Chapter 1 (General Administration) §§1.1101 - 1.1107, 1.1601, 1.1801 - 1.1823, 1.1901 - 1.1904, and 1.2701 - 1.2703. These sections are identical or substantially similar to Chapter 103 making Chapter 103 unnecessary. For these reasons the Division proposes the repeal of Chapter 103.

Patricia Gilbert, Executive Deputy Commissioner of Operations, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering the repeal and there will be no measurable effect on local employment or the local economy as a result of the proposed repeal.

Ms. Gilbert has also determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be to bring increased clarity and efficiency in the use and implementation of Division rules. There will be no economic cost to any individuals, or insurers or other entities regulated by the Division, regardless of size, as a result of the proposed repeal.

In accordance with the Government Code §2006.002(c), the Division has determined that this proposed repeal will not have an adverse economic effect on small or micro businesses because the provisions being repealed are now unnecessary. Therefore, in accordance with the Government Code §2006.002(c), the Division is not required to prepare a regulatory flexibility analysis.

The Division has determined that no private real property interests are affected by this proposal and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on August 5, 2013. Comments may be submitted via the internet through the Division's website at www.tdi.texas.gov/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.texas.gov or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after the close of comment will not be considered.

A request for a public hearing must be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. CST by the close of the comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

SUBCHAPTER A. EMPLOYEE TRAINING AND EDUCATION PROGRAM

28 TAC §§103.1 - 103.3, 103.100

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

The repeal is proposed under the broad general authority granted to the Commissioner of Workers' Compensation by Labor Code §§402.00111, 402.00113, and 402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority under the Labor Code. Section 402.00113 provides that the Division is administratively attached to the Department. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Labor Code.

The following statute is affected by this proposal: Labor Code §§402.00113, 402.041 and 402.042.

§103.1. *General Provisions.*

§103.2. *Employee Training and Education Program.*

§103.3. *No Effect on At-Will Status.*

§103.100. *Historically Underutilized Businesses.*

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 June 24, 2013.

TRD-201302674

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: August 4, 2013

For further information, please call: (512) 804-4703



SUBCHAPTER B. AGENCY CONTRACTS

28 TAC §103.101

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance, Division of Workers' Compensation or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the broad general authority granted to the Commissioner of Workers' Compensation by Labor Code §§402.00111, 402.00113, and 402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority under the Labor Code. Section 402.00113 provides that the Division is administratively attached to the Department. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Labor Code.

The following statute is affected by this proposal: Labor Code §§402.00113, 402.041 and 402.042.

§103.101. *Vendor Protest Procedures.*

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

Filed with the Office of the Secretary of State on June 24, 2013.

TRD-201302675

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: August 4, 2013

For further information, please call: (512) 804-4703



SUBCHAPTER C. RESOLUTION OF CONTRACT CLAIMS

28 TAC §§103.300 - 103.322

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

The repeal is proposed under the broad general authority granted to the Commissioner of Workers' Compensation by Labor Code §§402.00111, 402.00113, and 402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority under the Labor Code. Section 402.00113 provides that the Division is administratively attached to the Department. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Labor Code.

The following statute is affected by this proposal: Labor Code §§402.00113, 402.041 and 402.042.

§103.300. *Purpose.*

§103.301. *Applicability.*

§103.302. *Definitions.*

§103.303. *Prerequisites to Suit.*

§103.304. *Sovereign Immunity.*

§103.305. *Notice of Claim of Breach of Contract.*

§103.306. *Agency Counterclaim.*

§103.307. *Duty to Negotiate.*

§103.308. *Timetable.*

§103.309. *Conduct of Negotiation.*

§103.310. *Settlement Approval Procedures.*

§103.311. *Settlement Agreement.*

§103.312. *Costs of Negotiation.*

§103.313. *Request for Contested Case Hearing.*

§103.314. *Mediation Timetable.*

§103.315. *Mediation of Contract Disputes.*

§103.316. *Qualifications and Immunity of the Mediator.*

§103.317. *Confidentiality of Mediation and Final Settlement Agreement.*

§103.318. *Costs of Mediation.*

§103.319. *Settlement Approval Procedures.*

§103.320. *Initial Settlement Agreement.*

§103.321. *Final Settlement Agreement.*

§103.322. *Referral to the State Office of Administrative Hearings.*

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 June 24, 2013.

TRD-201302676

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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For further information, please call: (512) 804-4703



SUBCHAPTER D. FACILITIES AND PROPERTY MANAGEMENT

28 TAC §103.400

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance, Division of Workers' Compensation or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the broad general authority granted to the Commissioner of Workers' Compensation by Labor Code §§402.00111, 402.00113, and 402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority under the Labor Code. Section 402.00113 provides that the Division is administratively attached to the Department. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Labor Code.

The following statute is affected by this proposal: Labor Code §§402.00113, 402.041 and 402.042.

§103.400. *Fleet Vehicle Management Program.*

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

Filed with the Office of the Secretary of State on June 24, 2013.

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Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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For further information, please call: (512) 804-4703



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

SUBCHAPTER L. LICENSING OF SOURCE MATERIAL RECOVERY AND BY-PRODUCT MATERIAL DISPOSAL FACILITIES

30 TAC §336.1115

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes to amend §336.1115.

Background and Summary of the Factual Basis for the Proposed Rule

In response to a petition for rulemaking, the commission proposes this rulemaking to amend the decommissioning standards applicable to radioactive source material (i.e., uranium mining) sites and by-product disposal sites so that the standards will conform to federal requirements.

On February 12, 2013, Barrett & Associates, PLLC submitted a rulemaking petition on behalf of Uranium Energy Corp. (UEC), Radioactive Materials License Number R06064. In their petition, UEC requested that the commission amend §336.1115(e) related to the standards (other than radium) for release of outdoor areas for unrestricted use to reflect that the Radium Benchmark Dose approach is an alternative method to meeting the soil criteria specified in §336.1115(e). At the TCEQ's agenda on April 10, 2013, the commission approved the initiation of a rulemaking based on this petition (Project Number 2013-021-PET-NR).

As requested in the petition, the commission proposes to amend §336.1115(e) to remove paragraph (3) and amend paragraph (4) to reflect the Radium Benchmark Dose approach as the clean-up standard (in addition to the radium standard) for release of outdoor areas for unrestricted use. In considering the petition, agency staff reviewed the current language in §336.1115(e) and determined that inclusion of a specific soil standard for the concentration of uranium in soil is not consistent with the federal requirements of the United States Nuclear Regulatory Commission (NRC). The federal regulations set a standard for the concentration of radium in soil and require a risk-based dose assessment, but do not establish a specific concentration limit for uranium. A decommissioning standard for the concentration of uranium in soil is not necessary because the required risk-based radium benchmark dose assessment approach accounts for the radioactivity of the radionuclides in soil, including uranium.

The licensing program for uranium mining has transferred several times from the TCEQ and the Texas Department of State Health Services (DSHS). When the program was previously at TCEQ, the commission proposed rules and invited comments on including a standard for the concentration of uranium in soils in a 1997 rulemaking (Rule Log Number 1997-154-336-WS). In response to comments from the NRC, however, the commission did not adopt a standard for uranium (*See* May 27, 1997, issue of the *Texas Register* (22 TexReg 4593).) After the program was transferred to DSHS in 1997, it appears the standard for uranium was picked up as a requirement in DSHS rules without any specific explanation. The current TCEQ rule language was carried back over from the rules of DSHS when the licensing program was transferred by Senate Bill 1604 in 2007 (Rule Project Number 2007-060-336-PR). The dose-based approach was added in the rule in response to a comment from the NRC, but the limit for the uranium concentration was not removed from the rule. Accordingly, the commission now proposes the rule to remove the uranium concentration requirement to be consistent with the applicable federal requirements.

Section Discussion

The commission proposes administrative changes throughout the proposed rule to reflect the agency's existing practices, conform with *Texas Register* and agency guidelines, and correct typographical and grammatical errors.

Section 336.1115(e) establishes the requirements for the release for unrestricted use of outdoor areas at source material recovery sites or by-product disposal sites. The commission proposes to amend §336.1115(e) by deleting the existing language in paragraph (3) that established a limit for the concentration of natural uranium in soil. The commission proposes to delete the language in paragraph (4) and renumber the existing requirement for the radium benchmark dose approach as paragraph (3). The commission proposes to reword the requirement of the radium benchmark approach to be consistent with the NRC's applicable language in 10 Code of Federal Regulations (CFR) Part 40, Appendix A, Criterion 6(6). As required under the existing rule, the potential peak annual total effective dose equivalent for members of the public or member of the critical group must be calculated by the methodology provided in NUREG-1620, Appendix H - "Guidance to the U.S. Nuclear Regulatory Commission Staff on Radium Dose Approach."

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency. Other units of state or local government would not experience any fiscal impact as a result of the administration or enforcement of the proposed rule. The proposed rule affects business entities that are licensed to receive, possess, use, or dispose of radioactive material in source material recovery facilities and other operations that accept radioactive by-product material for disposal.

Specifically, the rule would amend Texas' existing decommissioning standards that apply to radioactive source material sites and by-product disposal sites so that they conform to federal requirements of the NRC. The proposed rule removes a state specific standard for the concentration of uranium in soil and amends state rules to establish a risk based Radium Benchmark Dose Approach for determining the acceptable concentration of radionuclides (including uranium) in soil that the public could be exposed to from a decommissioned site.

The proposed rule would not have a significant fiscal impact on the agency. Units of local government are not expected to experience fiscal impacts since they do not typically decommission sites with radionuclides.

Public Benefits and Costs

Ms. Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be conformance to NRC decommissioning standards that are protective of human health and safety and the environment.

The proposed rule would not have a significant fiscal impact on individuals.

There are ten businesses that own or operate 17 facilities that could be affected by the proposed rule. These facilities are located in Brooks, Duval, Kleberg, Live Oak, Karnes, and Andrews Counties. Four have been closed and are awaiting release for unrestricted use; nine are pre-operational or operational in-situ uranium recovery and processing facilities; three are by-product material impoundments closed to new radioactive waste; and one is an operational by-product material disposal facility. The proposed rule would only apply when a facility is in the decommissioning stage which occurs after operations have ceased. The proposed rule would not change the amount of sampling re-

quired, and sampling costs are expected to remain unchanged from that required by current rules. The proposed rule could generate cost savings or cost increases for waste disposal charges depending on the amount and characteristics of the different radionuclides found in the soil that must be removed using the NRC risk based Radium Benchmark Dose Approach. However, the removal of a state specific standard for uranium that conflicts with the federal decommissioning standards is expected to reduce costs for most businesses that remediate sites that have uranium contamination.

The proposed rule is in response to a petition to make the state's decommissioning standards conform to federal requirements. The UEC has finished decommissioning a facility where uranium is present and is awaiting agency confirmation that the site meets release limits that comply with federal risk based standards. By removing the existing state standard for uranium, UEC would not be required to remove additional soil and pay for additional transportation and waste disposal to meet the separate uranium standard. Estimated savings might be as much as \$9,000 per truckload of waste.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule, since a small business would not be required to remediate sites for a separate state standard for uranium that contradicts federal standards. Small businesses could expect to see the same types of cost decreases for waste disposal of uranium or by-product material as that of a large business. There may be as many as three small businesses that are licensed to decommission sites with radioactive material.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment to Chapter 336 is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rule establishes decommissioning standards for the release of outdoor areas at uranium mining sites or by-product disposal

sites that are compatible with the requirements of the NRC. The commission proposes the rule to remove the standard for the concentration of uranium in soil. A decommissioning standard for the concentration of uranium in soil is not necessary because the required risk-based radium benchmark dose assessment approach accounts for the radioactivity of uranium.

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor adopt a rule solely under the general powers of the agency.

The Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401, authorizes the commission to regulate the recovery and processing of source material and the disposal of radioactive by-product material. THSC, §401.262 authorizes the commission to assure that processing and disposal sites are closed and that by-product material is managed in compliance with applicable federal standards. In addition, the state of Texas is an "Agreement State," authorized by the NRC to administer a radiation control program under the Atomic Energy Act. The proposed rule does not exceed a standard set by federal law. The proposed rulemaking implements standards that are consistent with the NRC requirements for the decommissioning of source material recovery sites or by-product disposal sites under 10 CFR Part 40, Appendix A, Criterion 6(6).

The proposed rule does not exceed an express requirement of state law. The Texas Radiation Control Act, THSC, Chapter 401, establishes general requirements for the licensing and disposal of radioactive materials. THSC, §401.262 specifically authorizes the commission to assure that processing and disposal sites are closed in compliance with applicable federal standards that are protective of human health and safety and the environment.

The commission has also determined that the proposed rule does not exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC's requirements for the regulation of radioactive materials and is adequate to protect health and safety. The commission determined that the proposed rule does not exceed the NRC's requirements nor exceed the requirements for retaining status as an "Agreement State."

The commission also determined that the rule is proposed under specific authority of the Texas Radiation Control Act, THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation, the licensing of source material recovery, and disposal of radioactive materials.

The commission invites public comment of the draft regulatory impact analysis determination.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rule and performed a preliminary assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to the proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The State of Texas has received authorization as an "Agreement State" from the NRC to administer a radiation control program under the Atomic Energy Act. The Atomic Energy Act requires the NRC to find that the state's program is compatible with NRC requirements for the regulation of radioactive materials and is protective of health and safety. The proposed rulemaking will provide consistency with federal regulations.

Nevertheless, the commission further evaluated the proposed rule and made a preliminary assessment that implementation of the proposed rule would not constitute a taking of real property under Texas Government Code, Chapter 2007. The purpose of the proposed rule is to establish the standards for release of outdoor areas for unrestricted use after the completion of decommissioning activities at uranium mining or by-product disposal sites. The standards are proposed to be consistent with the NRC's standards provided in 10 CFR Part 40, Appendix A, Criterion 6(6). The proposed rule would substantially advance this purpose by amending the current rule to remove a specific standard for concentration of uranium in soil, which is not included in the federal standards for release of property for unrestricted use. No requirements are imposed by the commission in the proposed rule that would constitute a taking of real property.

Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. The proposed rule does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the rule. The proposed rule removes the standard for the concentration of uranium in soil and mirror language of the NRC for the release of outdoor areas after decommissioning.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Submittal of Comments

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-029-336-OW. The comment period closes August 5, 2013. Copies of the proposed rule-making can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact Tony Gonzalez, (512) 239-6471.

Statutory Authority

The amendment is proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.262, which authorizes the commission to assure that by-product disposal sites are closed and that by-product material is managed and disposed in compliance with applicable federal standards; and THSC, §401.412, which provides the commission authority to adopt rules for the recovery and processing of source material and the disposal of by-product material. The proposed amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The amendment implements THSC, Chapter 401, relating to Radioactive Materials and Other Sources of Radiation, including THSC, §401.011, relating to Radiation Control Agency; THSC, §401.051, relating to Adoption of Rules and Guidelines; THSC, §401.103, relating to Rules and Guidelines for Licensing and Registration; THSC, §401.104, relating to Licensing and Registration Rules; and THSC, §401.262, relating to Management of Certain By-Product Material.

§336.1115. Expiration and Termination of Licenses; Decommissioning of Sites, Separate Buildings or Outdoor Areas.

(a) The term of the specific license is for a fixed term not to exceed ten years.

(b) Expiration of the specific license does not relieve the licensee of the requirements of this chapter.

(c) All license provisions continue in effect beyond the expiration date with respect to possession of radioactive material until the agency notifies the former licensee in writing that the provisions of the license are no longer binding. During this time, the former licensee must:

(1) be limited to actions involving radioactive material that are related to decommissioning; and

(2) continue to control entry to restricted areas until the location(s) is suitable for release for unrestricted use in accordance with the requirements of subsection (e) of this section.

(d) Within 60 days of the occurrence of any of the following, each licensee must provide notification to the agency in writing and either begin decommissioning its site, or any separate buildings or outdoor areas that contain residual radioactivity in accordance with the closure plan in §336.1111(1)(B) of this title (relating to Special Requirements for a License Application for Source Material Recovery and By-product [By-Product] Material Disposal Facilities), so that the buildings or outdoor areas are suitable for release in accordance with subsection (e) of this section if:

(1) the license has expired in accordance with subsection (a) of this section; or

(2) the licensee has decided to permanently cease principal activities, as defined in §336.1105(24) of this title (relating to Definitions), at the entire site or in any separate building or outdoor area; or

(3) no principal activities have been conducted for a period of 24 months in any building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with agency requirements.

(e) Outdoor areas are considered suitable for release for unrestricted use if the following limits are not exceeded.

(1) The concentration of radium-226 or radium-228 (in the case of thorium by-product material) in soil, averaged over any 100 square meters (m²), may not exceed the background level by more than:

(A) 5 picocuries per gram (pCi/g) (0.185 becquerel per gram (Bq/g)), averaged over the first 15 centimeters (cm) [em] of soil below the surface; and

(B) 15 pCi/g (0.555 Bq/g), averaged over 15 cm thick layers of soil more than 15 cm below the surface.

(2) The contamination of vegetation may not exceed 5 pCi/g (0.185 Bq/g), based on dry weight, for radium-226 or radium-228.

(3) By-product material containing concentrations of radionuclides other than radium in soil (e.g., natural uranium, natural thorium, lead-210), and surface activity on remaining structures, must not result in a total effective dose equivalent (TEDE) exceeding the dose from cleanup of radium contaminated soil to the standard in paragraph (1) of this subsection (radium benchmark dose), and must be at levels which are as low as reasonably achievable. If more than one residual radionuclide is present in the same 100 m² area, the sum of the ratios for each radionuclide of concentration present to the calculated radium benchmark dose equivalent concentration limits will not exceed "1" (unity). A calculation of the potential peak annual TEDE within 1,000 years to the average member of the critical group that would result from applying the radium standard (not including radon) must be submitted for approval, using the United States Nuclear Regulatory Commission (NRC) staff guidance on the Radium Benchmark Dose Approach.

~~{(3) The concentration of natural uranium in soil, with no daughters present, averaged over any 100 m², may not exceed the background level by more than:}~~

~~{(A) 30 pCi/g (1.11 Bq/g), averaged over the top 15 cm of soil below the surface; and}~~

~~{(B) 150 pCi/g (5.55 Bq/g), average concentration at depths greater than 15 centimeters below the surface; and}~~

{(4) no individual member of the public will receive an effective dose equivalent in excess of 100 mrem (1 mSv) per year as calculated by the methodology provided in NUREG-1620, Appendix H - "Guidance to the U.S. Nuclear Regulatory Commission Staff on the Radium Dose Approach."}

(f) Coincident with the notification required by subsection (c) of this section, the licensee shall maintain in effect all decommissioning financial security established by the licensee in accordance with §336.1125 of this title (relating to Financial Assurance [Security] Requirements) in conjunction with a license issuance or renewal or as required by this section. The amount of the financial security must be increased, or may be decreased, as appropriate, with agency approval, to cover the detailed cost estimate for decommissioning established in accordance with subsection (1)(5) of this section.

(g) In addition to the provisions of subsection (h) of this section, each licensee must submit an updated closure plan to the agency within 12 months of the notification required by subsection (d) of this section. The updated closure plan must meet the requirements of §336.1111(1)(B) and §336.1125 of this title. The updated closure plan must describe the actual conditions of the facilities and site and the proposed closure activities and procedures.

(h) The agency may grant a request to delay or postpone initiation of the decommissioning process if the agency determines that such relief is not detrimental to the occupational and public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification in accordance with subsection (d) of this section. The schedule for decommissioning in subsection (d) of this section may not begin until the agency has made a determination on the request.

(i) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(1) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(2) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(3) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(4) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(j) The agency may approve an alternate schedule for submittal of a decommissioning plan required in accordance with subsection (d) of this section if the agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the occupational and public health and safety and is otherwise in the public interest.

(k) The procedures listed in subsection (i) of this section may not be carried out prior to approval of the decommissioning plan.

(l) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(1) a description of the conditions of the site, separate buildings, or outdoor area sufficient to evaluate the acceptability of the plan;

(2) a description of planned decommissioning activities;

(3) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(4) a description of the planned final radiation survey;

(5) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate decommissioning; and

(6) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in subsection (p) of this section.

(m) The proposed decommissioning plan may be approved by the agency if the information in the plan demonstrates that the decommissioning will be completed as soon as practicable and that the occupational health and safety of workers and the public will be adequately protected.

(n) Except as provided subsection (p) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(o) Except as provided in subsection (p) of this section, when decommissioning involves the entire site, the licensee must request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(p) The agency may approve a request for an alternate schedule for completion of decommissioning of the site or separate buildings or outdoor areas and the license termination if appropriate, if the agency determines that the alternative is warranted by the consideration of the following:

(1) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period; and

(3) other site-specific factors that the agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural groundwater restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(q) As the final step in decommissioning, the licensee must:

(1) certify the disposition of all radioactive material, including accumulated by-product material;

(2) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in accordance with subsection (e) of this section. The licensee shall, as appropriate:

(A) report the following levels:

(i) gamma radiation in units of microroentgen per hour ($\mu\text{R/hr}$) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces;

(ii) radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (μCi) (megabecquerels (MBq)) per 100 [square centimeters (cm^2)] for surfaces;

(iii) μCi (MBq) per milliliter for water; and

(iv) picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and

(B) specify the manufacturer's name, and model and serial number of survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(r) The executive director will provide written notification to specific licensees, including former licensees with license provisions continued in effect beyond the expiration date in accordance with subsection (d) of this section, that the provisions of the license are no longer binding. The executive director will provide such notification when the executive director determines that:

(1) radioactive material has been properly disposed;

(2) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(3) a radiation survey has been performed that demonstrates that the premises are suitable for release in accordance with agency requirements;

(4) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the requirements of subsection (e) of this section;

(5) all records required by §336.343 of this title (relating to Records of Surveys) have been submitted to the agency;

(6) the licensee has paid any outstanding fees required by this chapter and has resolved any outstanding notice(s) of violation issued to the licensee;

(7) the licensee has met the applicable technical and other requirements for closure and reclamation of a by-product material disposal site; and

(8) the [United States Nuclear Regulatory Commission (NRC)] has made a determination that all applicable standards and requirements have been met.

(s) Licenses for source material recovery or by-product material disposal are exempt from subsections (d)(3), (g), and (h) of this section with respect to reclamation of by-product material impoundments or disposal areas. Timely reclamation plans for by-product material disposal areas must be submitted and approved in accordance with §336.1129(p) - (aa) of this title (relating to Technical Requirements).

(t) A licensee may request that a subsite or a portion of a licensed site be released for unrestricted use before full license termination as long as release of the area of concern will not adversely impact the remaining unaffected areas and will not be recontaminated by ongoing authorized activities. When the licensee is confident that the area of concern will be acceptable to the agency for release for unrestricted use, a written request for release for unrestricted use and agency confirmation of closeout work performed shall be submitted to the agency. The request should include a comprehensive report, accompanied by survey and sample results that show contamination is less than the limits specified in subsection (e) of this section and an explanation of how ongoing authorized activities will not adversely affect the area proposed to be released. Upon confirmation by the agency that the area of concern is releasable for unrestricted use, the licensee may apply for a license amendment, if required.

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 June 21, 2013.

TRD-201302598

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 4, 2013

For further information, please call: (512) 239-0779

TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 47. QUALIFIED DOMESTIC RELATIONS ORDERS

34 TAC §47.17

The Teacher Retirement System of Texas (TRS) proposes amendments to §47.17, concerning qualified domestic relations orders, in Chapter 47 of TRS' rules. Chapter 47 addresses court orders that divide TRS benefit payments, usually in connection with a divorce, and direct payment of part or all of a benefit to an "alternate payee." A qualified domestic relations order (QDRO) is a court order that has been reviewed by TRS and found to meet applicable requirements to allow TRS to make direct payment to an alternate payee of the portion of the TRS benefit awarded to the alternate payee, if, as and when the TRS benefit is payable to the TRS participant.

Section 47.17 addresses how alternate payee benefits are calculated if payment to the alternate payee commences before the commencement of a member's benefits due to an election by the alternate payee under §804.005, Texas Government Code. Section 804.005 authorizes TRS to pay the alternate payee the court awarded portion of the actuarial equivalent of the benefits accrued to the member at the time of the alternate payee's election. This amount is in lieu of the benefits awarded in the QDRO. In order for the alternate payee to commence receiving the benefits awarded in the QDRO before the member begins to receive a distribution of benefits, the member must be at least 62 years of age and not retired but eligible to retire without reduction for early age. The benefit to the alternate payee is payable in the form of a life annuity.

Because of the many types of awards made to alternate payees in QDROs over the years, it became necessary to provide instructions in the rule addressing how to calculate the alternate payee's portion under each type of award. Subsection (y) addresses how to calculate the alternate payee's portion when the QDRO directs TRS to pay a stated monthly amount. The subsection currently directs staff to simply divide the stated monthly amount by the member's life annuity factor, a calculation method which will result in a reduced benefit to the alternate payee. The subsection should direct staff to multiply the stated monthly amount by the member's life annuity factor in order to arrive at the amount of money TRS would have expected to pay to the alternate payee over the member's lifetime and then to divide the lump sum amount by the alternate payee's life annuity factor

effectively annuitizing the lump sum over the alternate payee's lifetime. The proposed amendment will correct this error so that an alternate payee who is authorized under a QDRO to receive a stated monthly amount of the annuity payment made on behalf of the participant will receive the correct amount of annuity when requesting to receive a lifetime annuity under §804.005 of the Texas Government Code.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §47.17 will be in effect, there will be no fiscal implications for the state and local governments.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch has determined that the public benefit will be to elucidate the methods for calculating an alternate payee's benefits before the member's benefits begin and ensure that the alternate payee will receive the correct amount of annuity.

Mr. Welch has determined that there will be no anticipated economic cost to entities or persons required to comply with the proposed rule. In correcting an error, the proposed amendments ensure that affected payments to alternate payees are calculated on an actuarial equivalent basis as provided by §804.005 of the Texas Government Code and §47.17(b). Mr. Welch has determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Texas Government Code. Mr. Welch has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002, Texas Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice and the proposed rule in the *Texas Register*.

Statutory Authority. The amendments are proposed under Texas Government Code §825.102, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board; and §804.003(n) concerning QDROs, and §804.005(g), concerning payment in certain circumstances in lieu of benefits awarded by a QDRO, each of which authorizes TRS to adopt rules to administer that respective section.

Cross-Reference to Statute. The proposed amendments affect 26 U.S.C. §414(p) of the Internal Revenue Code, relating to QDROs and qualified plans.

§47.17. *Calculation for Alternate Payee Benefits Before a Member's Benefit Begins.*

(a) - (x) (No change.)

(y) In the event the amount of monthly retirement benefit awarded to the alternate payee in the QDRO is a stated monthly amount rather than a percentage, determine the alternate payee's actuarial equivalent benefit by multiplying the stated monthly amount times the life annuity factor at the member's age and then dividing the product [stated monthly amount] by the life annuity factor at the alternate payee's age.

(z) (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 June 21, 2013.

TRD-201302595

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: August 4, 2013

For further information, please call: (512) 542-6438



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 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 89. VEHICLE BOOTING AND IMMOBILIZATION

16 TAC §§89.70, 89.78, 89.79, 89.103

The Texas Department of Licensing and Regulation withdraws the proposed amendments to §§89.70, 89.78, 89.79, and 89.103 which appeared in the January 25, 2013, issue of the *Texas Register* (38 TexReg 343).

Filed with the Office of the Secretary of State on June 18, 2013.

TRD-201302536

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: June 18, 2013

For further information, please call: (512) 475-4879



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 379. FAMILY VIOLENCE PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §379.1, concerning definitions; §§379.101 - 379.104, 379.201 - 379.206, 379.301, 379.302, 379.401 - 379.404, 379.501, 379.502, 379.504, 379.508, 379.509, 379.602, 379.604 - 379.609, 379.612 - 379.619, 379.621, 379.623, 379.625 - 379.632, 379.634, 379.635, 379.702 - 379.711, and 379.714 - 379.718, concerning shelter centers; §§379.802, 379.803, 379.901 - 379.903, 379.1001, 379.1002, 379.1202, 379.1302, 379.1304 - 379.1307, 379.1309 - 379.1311, 379.1401 - 379.1405, 379.1407, and 379.1408, concerning special nonresidential projects; §§379.1501 - 379.1504, 379.1601 - 379.1605, 379.1701, 379.1702, 379.1801 - 379.1804, 379.1903, 379.2002, 379.2004 - 379.2008, 379.2010 - 379.2018, 379.2021 - 379.2030, 379.2032, 379.2033, and 379.2102 - 379.2108, concerning nonresidential centers; adopts the repeal of §§379.207 and 379.405 - 379.407, concerning shelter centers; §§379.1101 - 379.1103 and 379.1312 - 379.1321, concerning special nonresidential projects; and §§379.1606, 379.1805, 379.1806, and 379.2109 - 379.2113, concerning nonresidential centers; and adopts new §§379.405 - 379.408, concerning shelter centers; §§379.1101 - 379.1105 and 379.1312 - 379.1323, concerning special nonresidential projects; and §§379.1805 - 379.1807 and 379.2109 - 379.2114, concerning nonresidential centers.

The amendments to §§379.202, 379.404, 379.508, 379.631, 379.1306, 379.1701, and 379.2029 are adopted with changes to the proposed text as published in the April 19, 2013, issue of the *Texas Register* (38 TexReg 2441) and will be republished. The amendments to §§379.1, 379.101 - 379.104, 379.201, 379.203 - 379.206, 379.301, 379.302, 379.401 - 379.403, 379.501, 379.502, 379.504, 379.509, 379.602, 379.604 - 379.609, 379.612 - 379.619, 379.621, 379.623, 379.625 - 379.630, 379.632, 379.634, 379.635, 379.702 - 379.711, 379.714 - 379.718, 379.802, 379.803, 379.901 - 379.903, 379.1001, 379.1002, 379.1202, 379.1302, 379.1304, 379.1305, 379.1307, 379.1309 - 379.1311, 379.1401 - 379.1405, 379.1407, 379.1408, 379.1501 - 379.1504, 379.1601 - 379.1605, 379.1702, 379.1801 - 379.1804, 379.1903, 379.2002, 379.2004 - 379.2008, 379.2010 - 379.2018, 379.2021 - 379.2028, 379.2030, 379.2032, 379.2033, and 379.2102 - 379.2108; the repeals of §§379.207, 379.405 - 379.407, 379.1101 - 379.1103, 379.1312 - 379.1321, 379.1606, 379.1805, 379.1806, and 379.2109 - 379.2113; and new §§379.405 - 379.408, 379.1101

- 379.1105, 379.1312 - 379.1323, 379.1805 - 379.1807, and 379.2109 - 379.2114 are adopted without changes to the proposed text as published in the April 19, 2013, issue of the *Texas Register* (38 TexReg 2441) and will not be republished.

Background and Justification

The Family Violence Program promotes self-sufficiency, safety, and long-term independence from family violence for adult victims and their children. The program provides emergency shelter and support services, educates the public, and provides training and prevention support to various agencies. HHSC administers the program under the authority of Chapter 51 of the Texas Human Resources Code.

HHSC contracts with three types of local family violence centers and organizations to carry out its Family Violence Program: shelter centers, special nonresidential projects, and nonresidential centers. Over the course of monitoring contracts with these entities, HHSC identified some areas in which the rules governing the Family Violence Program needed clarification, required updating to reflect current practices, or could be strengthened to improve HHSC's ability to monitor contract compliance. The amendments, repeals, and new sections are adopted in part to meet these objectives.

The adopted rules also reflect changing trends and a heightened awareness of the importance of confidentiality in programs and services for victims of family violence. The adopted amendments and new rules include requirements for board and staff training on confidentiality requirements, policies and procedures to address technology safety and data security, and confidential treatment of records and disposition of case files.

Further, the rules are adopted to update or add citations to federal or state law or regulation where needed to provide clear references to program authority and rule requirements.

Comments

HHSC received no comments regarding adoption of the proposed rules.

HHSC made minor changes to the proposed rule language as follows:

- In §379.202(3), changed "chapter" to "division."
- In §379.404, added the word "and" at the end of subsection (b)(10).
- In §379.508(a), changed "chapter" to "subchapter."
- In §379.631(a)(3), changed "title" to "division."
- In §379.1306(3), changed "chapter" to "division."
- In §379.1701, replaced a period with a semicolon at the end of paragraph (4)(K).

- In §379.2029(a)(3), changed "title" to "division."

SUBCHAPTER A. DEFINITIONS

1 TAC §379.1

Statutory Authority

The amendment is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2013.

TRD-201302640

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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Proposal publication date: April 19, 2013

For further information, please call: (512) 424-6900



SUBCHAPTER B. SHELTER CENTERS

DIVISION 1. BOARD OF DIRECTORS

1 TAC §§379.101 - 379.104

Statutory Authority

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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DIVISION 2. CONTRACT STANDARDS

1 TAC §§379.201 - 379.206

Statutory Authority

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

§379.202. Satellite Shelter Funding.

In order to qualify for satellite shelter funding, the center must:

(1) Be a current Health and Human Services Commission (HHSC) contractor in good standing;

(2) Develop, maintain, and comply with written policies and procedures that describe the relationship between the center and the satellite shelter; and

(3) Ensure the satellite shelter meets all satellite shelter requirements in §379.203 of this division (relating to Satellite Shelter 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.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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1 TAC §379.207

Statutory Authority

The repeal is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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DIVISION 3. FISCAL MANAGEMENT

1 TAC §§379.301, §379.302

Statutory Authority

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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DIVISION 4. PERSONNEL

1 TAC §§379.401 - 379.408

Statutory Authority

The amendments and new rules are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

§379.404. *New Employee Orientation and Training.*

(a) A center must provide an oral orientation about the organization for all new employees within the first two days of employment.

(b) Within two weeks after the first day of employment, all new employees must receive basic oral or written information regarding:

- (1) Dynamics of family violence;
- (2) A brief history of the Texas Battered Women's Movement;
- (3) A brief summary of current Texas laws that address family violence issues; and
- (4) Federal, state, and program requirements regarding confidentiality.

(c) Direct service employees and their supervisors must also receive training on the following:

- (1) Crisis intervention;
- (2) Hotline skills, if applicable;
- (3) Peer counseling techniques;
- (4) Risk assessment and safety planning for victims of family violence;
- (5) Legal options for victims of family violence;
- (6) Economic options for victims of family violence;

(7) The center's policies and procedures, including all Health and Human Services Commission required policies and procedures;

(8) Sensitivity to cultural diversity;

(9) Applicable civil rights laws and regulations;

(10) All required documentation and procedures related to resident and nonresident issues; and

(11) Confidentiality.

(d) Training described in subsections (b) and (c) of this section may be provided electronically.

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-201302645

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



1 TAC §§379.405 - 379.407

Statutory Authority

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201302646

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

1 TAC §§379.501, 379.502, 379.504, 379.508, 379.509

Statutory Authority

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement

a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

§379.508. *Exceptions to Allowable Types of Facilities for a 24-Hour-a-Day Shelter.*

(a) A center may request an exception to the allowable types of facilities for a 24-hour-a-day shelter by submitting a written waiver request that addresses the factors of safety and service delivery to the Health and Human Services Commission (HHSC), in accordance with §379.206 of this subchapter (relating to Requesting a Variance or Waiver).

(b) A waiver will be granted if HHSC approves the request.

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-201302647

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



DIVISION 6. PROGRAM ADMINISTRATION

1 TAC §§379.602, 379.604 - 379.609, 379.612 - 379.619, 379.621, 379.623, 379.625 - 379.632, 379.634, 379.635

Statutory Authority

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

§379.631. *Community Education.*

(a) A center must have written policies and procedures about community education that:

(1) ensure that community education is provided to as many diverse groups as possible in each county where services are provided;

(2) focus part of the community education on informing victims of family violence of existing family violence services; and

(3) comply with §379.608 of this division (relating to Access to Services for People with Limited English Proficiency).

(b) When providing community education, a center must:

(1) use presentations;

(2) distribute written materials; and

(3) establish and use media contacts.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



DIVISION 7. SERVICE DELIVERY

1 TAC §§379.702 - 379.711, 379.714 - 379.718

Statutory Authority

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



SUBCHAPTER C. SPECIAL NONRESIDENTIAL PROJECTS

DIVISION 1. BOARD OF DIRECTORS

1 TAC §§379.802, §379.803

Statutory Authority

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2013.

TRD-201302650

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



DIVISION 2. CONTRACT STANDARDS

1 TAC §§379.901 - 379.903

Statutory Authority

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon
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DIVISION 3. FISCAL MANAGEMENT

1 TAC §379.1001, §379.1002

Statutory Authority

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon
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DIVISION 4. PERSONNEL

1 TAC §§379.1101 - 379.1103

Statutory Authority

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon
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1 TAC §§379.1101 - 379.1105

Statutory Authority

The new rules are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon
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DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

1 TAC §379.1202

Statutory Authority

The amendment is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally

based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201302655

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



DIVISION 6. PROGRAM ADMINISTRATION

1 TAC §§379.1302, 379.1304 - 379.1307, 379.1309 - 379.1323

Statutory Authority

The amendments and new rules are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

§379.1306. *Denial of Services.*

A contractor can deny services to an otherwise eligible victim of family violence only if it has written policies that outline specific reasons or behaviors that would make a victim ineligible. These policies must:

- (1) address only behaviors that threaten the safety and security of staff and program participants;
- (2) apply equally to all people;
- (3) comply with the laws and regulations described in §379.1304 of this division (relating to Federal and State Laws Regarding Eligibility); and
- (4) contain procedures that take into consideration the safety of a victim.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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1 TAC §§379.1312 - 379.1321

Statutory Authority

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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DIVISION 7. SERVICE DELIVERY

1 TAC §§379.1401 - 379.1405, 379.1407, 379.1408

Statutory Authority

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



SUBCHAPTER D. NONRESIDENTIAL CENTERS

DIVISION 1. BOARD OF DIRECTORS

1 TAC §§379.1501 - 379.1504

Statutory Authority

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally

based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



DIVISION 2. CONTRACT STANDARDS

1 TAC §§379.1601 - 379.1605

Statutory Authority

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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1 TAC §379.1606

Statutory Authority

The repeal is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



DIVISION 3. FISCAL MANAGEMENT

1 TAC §379.1701, §379.1702

Statutory Authority

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

§379.1701. Accounting System Requirements.

A center must maintain an accounting system and records that:

- (1) records revenue and expenditures using generally accepted accounting principles;
- (2) includes a chart of accounts that lists all accounts by an assigned number;
- (3) contains a general ledger and subsidiary ledgers;
- (4) maintains supporting documentation for all revenue and expenditures, including, but not limited to:
 - (A) receipts or vouchers for revenue;
 - (B) bank statements reconciled to the general ledger bank accounts;
 - (C) canceled checks;
 - (D) deposit slips;
 - (E) approved invoices;
 - (F) receipts;
 - (G) leases;
 - (H) contracts;
 - (I) time sheets;
 - (J) inventory; and
 - (K) cost allocation worksheets;
- (5) identifies all funding sources and expenditures by separate fund type; and
- (6) uses a double-entry accounting system, either cash, accrual, or modified accrual.

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-201302662

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



DIVISION 4. PERSONNEL

1 TAC §§379.1801 - 379.1807

Statutory Authority

The amendments and new rules are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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1 TAC §379.1805, §379.1806

Statutory Authority

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

1 TAC §379.1903

Statutory Authority

The amendment is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



DIVISION 6. PROGRAM ADMINISTRATION

1 TAC §§379.2002, 379.2004 - 379.2008, 379.2010 - 379.2018, 379.2021 - 379.2030, 379.2032, 379.2033

Statutory Authority

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

§379.2029. *Community Education.*

(a) A center must have written policies and procedures about community education that:

(1) ensure that community education is provided to as many diverse groups as possible in each county where services are provided;

(2) focus part of the community education on informing victims of family violence of existing family violence services; and

(3) comply with §379.2008 of this division (relating to Access to Services for People with Limited English Proficiency).

(b) When providing community education, a center must:

(1) use presentations;

(2) distribute written materials; and

(3) establish and use media contacts.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



DIVISION 7. SERVICE DELIVERY

1 TAC §§379.2102 - 379.2114

Statutory Authority

The amendments and new rules are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



1 TAC §§379.2109 - 379.2113

Statutory Authority

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §51.010, which allows HHSC to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 4. CREDIT CARD SURCHARGE APPEAL PROCEDURES

SUBCHAPTER A. CONTESTED CASE PROCEDURE FOR VIOLATIONS ON OR BEFORE AUGUST 31, 2013

7 TAC §§4.101 - 4.106

The Finance Commission of Texas (commission) adopts new 7 TAC Chapter 4, §§4.101 - 4.106, concerning Credit Card Surcharge Appeal Procedures. The commission adopts new §4.101 with changes and adopts new §§4.102 - 4.106 without changes to the proposed text as published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2728).

In general, the purpose of the adopted new rules is to provide procedures for parties to appeal credit card surcharge issues to the commission for violations occurring on or before August 31, 2013.

The new rules in Chapter 4, Subchapter A outline how a credit card surcharge complaint may be appealed to the commission and heard as a contested case under the Administrative Procedure Act. The Office of Consumer Credit Commissioner (OCCC) will represent the commission during any contested case brought under the adopted new rules in Subchapter A. The available remedies under the new rules are a cease and desist order and restitution to persons who have been improperly charged. The individual purposes of each adopted rule are outlined in the following paragraphs.

Section 4.101 defines the terms used throughout the chapter.

Since the proposal, the Texas Legislature passed and the governor signed House Bill (HB) 2548, which will amend Texas Finance Code, §339.001. Currently, §339.001 provides exclusive jurisdiction to the Finance Commission to enforce violations concerning credit card surcharges under the statute. HB 2548 transfers that enforcement authority to the Consumer Credit Commissioner. Therefore, the new rules in Subchapter A outline the appeal procedures to be used for violations occurring prior to the effective date of HB 2548, which is September 1, 2013.

To provide clarity to those affected by these rules, §4.101 has been amended for this adoption by adding "and Scope" to the title of the rule, as well as new subsection (b), which states: "This subchapter applies only to violations of Texas Finance Code, §339.001 occurring on or before August 31, 2013."

Section 4.102 provides that the OCCC may accept complaints regarding credit card surcharges, may request additional information from the complainant and merchant, and will notify the merchant of the complaint.

Section 4.103 outlines the procedure the OCCC will follow in providing a recommendation to the commission on whether to initiate a credit card surcharge proceeding. The OCCC will notify the complainant and the merchant of the intended recommendation, including their right to provide written statements to the commission regarding the complaint before the commission's determination.

Section 4.104 describes the initiation of a credit card surcharge proceeding and the requirements for the notice of hearing sent to the respondent.

Section 4.105 requires that any action taken under the new chapter be preceded by a contested case subject to Texas Government Code, Chapter 2001 (the Administrative Procedure Act), and the contested case rules in 7 TAC Chapter 9. New §4.105 also delineates the enforcement activities that the OCCC may take in connection with a contested case under the chapter.

Section 4.106 outlines the procedure for the commission to issue a final order on a credit card surcharge complaint. The final order may require one or both of the following remedies: a cease and desist order, and restitution to persons who have been improperly charged. In addition, new §4.106 provides that a motion for rehearing is a prerequisite to an appeal of a final order under the section and that any such appeal must be made in a Travis County district court.

The commission received no written comments on the proposal.

The new rules are adopted under Texas Finance Code, §339.001(c), which states that the commission has exclusive jurisdiction to enforce and adopt rules relating to §339.001. Additionally, Texas Finance Code, §11.304, authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code.

The statutory provisions affected by the adoption are contained in Texas Finance Code, §339.001.

§4.101. Definitions and Scope.

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

(1) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(2) Complainant--A person who provides a complaint regarding a credit card surcharge to the finance commission.

(3) Credit card surcharge--A surcharge imposed on a buyer in a sale of goods or services for the use of a credit card instead of cash, a check, or a similar means of payment.

(4) Finance commission--The Finance Commission of the State of Texas.

(5) Merchant--A seller of goods or services.

(6) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(7) Respondent--A person against whom a disciplinary proceeding is directed by the finance commission under this chapter.

(b) This subchapter applies only to violations of Texas Finance Code, §339.001 occurring on or before August 31, 2013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2013.
TRD-201302605

Leslie L. Pettijohn
Consumer Credit Commissioner
Finance Commission of Texas
Effective date: July 11, 2013
Proposal publication date: May 3, 2013
For further information, please call: (512) 936-7621

◆ ◆ ◆
**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) adopts amendments to §97.207, concerning Contracts for Professional or Personal Services, without changes to the proposed text published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1291). The amendments add a provision for mediating disputes arising from professional or personal service contracts with the Department. The adoption incorporates the dispute resolution process adopted by the Office of the Attorney General.

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

The Commission received no comments on these proposed changes.

The amendments are adopted under Texas Finance Code §15.402 which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §124.351 and §124.352 which address permitted investments and investment limits.

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 June 24, 2013.

TRD-201302621
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: July 14, 2013
Proposal publication date: March 1, 2013
For further information, please call: (512) 837-9236

◆ ◆ ◆
TITLE 16. ECONOMIC REGULATION
**PART 8. TEXAS RACING
COMMISSION**

CHAPTER 311. OTHER LICENSES

The Texas Racing Commission adopts an amendment to 16 TAC §311.5 and new §311.112. These sections relate to the cat-

egories of licenses and the fees associated with each and to the eligibility requirements for licensure as an Equine Dental Provider. The amendment and new rule are adopted without changes to the proposed text as published in the April 26, 2013, issue of the *Texas Register* (38 TexReg 2605) and will not be republished.

The amendment to §311.5 deletes the license category of Tooth Floater and adds the new license category of Equine Dental Provider.

New §311.112 provides that an Equine Dental Provider must be licensed and in good standing with the Texas State Board of Veterinary Medical Examiners.

As a result of these adoptions, the Commission's rules will be consistent with amendments to the Texas Veterinary Licensing Act by House Bill 414, 82nd Legislative Session, and the adoption of related rules by the Texas State Board of Veterinary Medical Examiners.

No comments were received regarding adoption of the amendment and the new rule.

SUBCHAPTER A. LICENSING PROVISIONS

DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.5

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §7.02, which requires the Commission to adopt categories for the various occupations licensed under the Act and to specify the qualifications and experience required for licensing in each category that requires specific qualifications or experience.

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 June 21, 2013.

TRD-201302618

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: July 11, 2013

Proposal publication date: April 26, 2013

For further information, please call: (512) 833-6699



SUBCHAPTER B. SPECIFIC LICENSES

16 TAC §311.112

The new rule is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §7.02, which requires the Commission to adopt categories for the various occupations licensed under the Act and to specify the qualifications and experience required for licensing in each category that requires specific qualifications or experience.

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-201302617

Mark Fenner

General Counsel

Texas Racing Commission

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For further information, please call: (512) 833-6699



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 190. DISCIPLINARY GUIDELINES

SUBCHAPTER C. SANCTION GUIDELINES

22 TAC §190.14

The Texas Medical Board (Board) adopts amendments to §190.14, concerning Disciplinary Sanction Guidelines, without changes to the proposed text as published in the January 25, 2013, issue of the *Texas Register* (38 TexReg 351) and will not be republished.

The amendments provide that the board may suspend or revoke a licensee's license for boundary violations with a patient.

No comments were received regarding adoption of the amendment.

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

The amendments are also authorized by §§164.051 - 164.053, Texas Occupations Code.

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 June 19, 2013.

TRD-201302573

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: July 9, 2013

Proposal publication date: January 25, 2013

For further information, please call: (512) 305-7016



PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.4

Introduction. The Texas Board of Nursing (Board) adopts amendments to §211.4, concerning Officers. The amendments are adopted without changes to the proposed text published

in the May 17, 2013, issue of the *Texas Register* (38 TexReg 2941) and will not be republished.

Reasoned Justification. The amendment is adopted under the authority of the Occupations Code §301.057(b) and §301.151 and codifies the Board's existing policies and practice regarding the election of the Board's Vice President in rule.

At its January 2009 meeting, the Board appointed a four member Task Force to review the role and duties of the Board's Vice President. The Task Force concluded its review and presented a report to the full Board at its April 2009 Board meeting. In addition to making recommendations regarding the responsibilities of the Vice President, the Task Force recommended that the term of the Vice President be extended from one year to two years. The Board accepted the recommendations of the Task Force and authorized Board Staff to incorporate the Task Force's recommendations into Board rules and policies.

In April 2009, the Board updated its policies to reflect that the Vice President would be elected at the Board's October meeting in even-numbered years. Although 22 TAC §211.4 currently addresses the election of the Vice President, the Board has determined that the rule should be amended for consistency with the recommendations of the Task Force and the Board's existing policies and practice. As such, the adopted amendments specify that the term of the Vice President will be a two-year term and that Board elections will be held biennially, based upon the calendar year. The adopted amendments also prescribe procedures in the event that the office of the Vice President becomes vacant during any two-year term.

How the Section Will Function. Adopted §211.4(a) provides that, during the last meeting of the calendar year in even years, the Board will select from among its membership a Vice President. Further, the term of the Vice President will be for two years. Adopted §211.4(a) also provides that, if the office of Vice President becomes vacant during a two-year term, the members of the Board will elect a new Vice President from among its membership to serve for the remainder of the term.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority.

The amendments are adopted under the Occupations Code §301.057(b) and §301.151.

Section 301.057(b) provides that the Board shall elect other officers from its members.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 20, 2013.

TRD-201302577

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Effective date: July 10, 2013

Proposal publication date: May 17, 2013

For further information, please call: (512) 305-6822



CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.27

Introduction. The Texas Board of Nursing (Board) adopts amendments to §213.27, concerning Good Professional Character. Specifically, the adopted amendments affect the Board's Disciplinary Guidelines for Criminal Conduct (Guidelines), which are incorporated by reference in adopted §213.27(g). The amendments to §213.27 were published in the May 17, 2013, issue of the *Texas Register* (38 TexReg 2942). The Guidelines were also published in the May 17, 2013, issue of the *Texas Register* (38 TexReg 3152). The amendments are adopted with changes, as set out herein, and will be republished. The Guidelines are adopted without changes and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535; and the Occupations Code Chapter 53, particularly §53.025(a), which requires licensing agencies to issue guidelines that state the reasons that a particular crime is considered to relate to the practice of the licensing agency and any other criterion that affects the decision of the licensing agency when considering the effects of the crime on an individual's licensure status.

The Board formally proposed amendments to §213.27(g) in the May 17, 2013, issue of the *Texas Register* (38 TexReg 2942). The Board has made minor changes to the proposed text as adopted in order to more specifically reference the particular issue of the *Texas Register* in which the Guidelines were published. As such, adopted §213.27(g) includes a reference to the publication date and page number of the specific issue of the *Texas Register* in which the Guidelines were published. None of these changes, however, materially alters issues raised in the proposal, introduces new subject matter, or affects persons other than those previously on notice. Further, no changes were made to the Guidelines, and the Guidelines are adopted as they appeared in the May 17, 2013, issue of the *Texas Register* (38 TexReg 3152).

Background

The Guidelines were originally approved by the Board and published in the *Texas Register* on March 9, 2007 (32 TexReg 1409). The Board received no public comments on the Guidelines, and, on July 2, 2008, adopted the Guidelines by reference in §213.27(g)(5) (33 TexReg 5007). The Guidelines have not undergone formal review and amendment since their original publication date in 2007. As a result, at its April 2012 meeting, the Board issued a charge to the Eligibility and Disciplinary Advisory Committee (Committee) to review and make recommendations regarding the Guidelines. In particular, the Board charged the Committee with considering: (i) whether portions of the Guidelines were outdated/obsolete; (ii) whether the Guidelines should establish a minimally acceptable sanction for each criminal offense; (iii) whether the recommended range of sanctions in the Guidelines were appropriate; and (iv) the type

and/or amount of mitigating evidence necessary to support a more lenient sanction under the Guidelines.

The Committee met on November 30, 2012; February 8, 2013; and March 25, 2013, to review the Guidelines. Following a detailed review and discussion of the Guidelines, the Committee voted unanimously to recommend several changes to the Board. The Committee's recommended changes to the Guidelines, along with minor editorial/typographical changes identified by Board Staff, were presented to the Board at its April 2013 meeting. The Board voted to adopt the Guidelines, as amended, and propose amendments to §213.27(g) to incorporate the adopted changes into rule.

Many of the changes to the Guidelines are editorial and organizational in nature. However, some of the changes are more substantive. First, thirty-five new criminal offenses have been added to the Guidelines. These offenses include various felonies and misdemeanors, as well as crimes that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as affecting nursing licensure. The additional crimes include: continuous sexual abuse of young child or children (§301.4535(a)(5)); offenses for which registration as a sex offender is required under the Code of Criminal Procedure Chapter 62 (§301.4535(a)(16)); aggravated perjury (felony); bail jumping and failure to appear (felony/misdemeanor); bribery (felony); burglary of vehicles (felony/misdemeanor); credit card/debit card abuse (felony); criminal nonsupport (felony); driving while intoxicated with child passenger (felony); evading arrest or detention (felony/misdemeanor); failure to identify (misdemeanor); fraudulent destruction, removal, or concealment of writing (felony/misdemeanor); fraudulent use of possession of identifying information (felony); harboring runaway child (misdemeanor); hindering apprehension or prosecution (felony/misdemeanor); hindering secured creditors (felony/misdemeanor); interference with child custody (felony); intoxication assault (felony); intoxication manslaughter (felony); misapplication of fiduciary property or property of financial institution (felony/misdemeanor); obstruction or retaliation (felony); perjury (misdemeanor); prohibited substances and items in correctional facility (felony); prohibited weapon (felony/misdemeanor); public lewdness (misdemeanor); securing execution of document by deception (felony/misdemeanor); smuggling of persons (felony); tampering with or fabricating physical evidence (felony/misdemeanor); tampering with witness (felony); theft of service (felony/misdemeanor); trafficking of persons (felony); unlawful carrying weapon (felony/misdemeanor); unlawful possession of firearm (felony/misdemeanor); unlawful restraint (misdemeanor); and violation of civil rights of person in custody/improper sexual acts with a person in custody (felony/misdemeanor).

Pursuant to the Occupations Code Chapters 53 and 301 (Nursing Practice Act), criminal offenses may affect an individual's ability to obtain a nursing license (licensure eligibility) and a nurse's licensure status (licensure discipline). Board Staff routinely review individuals' criminal history to determine what effect, if any, a particular offense may have in eligibility and disciplinary cases. The thirty-five new offenses that were recommended by the Committee and approved by the Board are offenses that Board Staff have identified over the last few years during its review of eligibility and disciplinary files. These offenses have occurred frequently enough over the last few years to warrant inclusion in the Guidelines. Further, the Board has determined that these additional offenses are sufficiently related to the practice of nursing and are serious enough in

nature to warrant investigation and, possibly, denial of licensure and/or licensure discipline.

In addition to including these additional crimes in the Guidelines, corresponding sanction recommendations and explanatory rationale has been included as well. For example, the felony offense of intoxication manslaughter has been added to the Guidelines. As stated in the Guideline's preamble, although the Guidelines provide a recommended range of sanctions for each offense, each case is considered on its own merits. As such, the appropriate sanction in any given case will be determined upon a consideration of the aggravating and/or mitigating factors present in that case. For the offense of felony intoxication manslaughter, and depending upon the length of time that has transpired since the judicial order associated with the offense was issued, the recommended sanction range includes licensure denial or revocation, as well as options for licensure discipline. The remaining additional offenses that have been added to the Guidelines also include a corresponding recommended range of sanctions that will include an analysis of the mitigating and/or aggravating factors unique to each case.

The Guidelines also explain how each of the additional offenses are related to the practice of nursing. Using the previous example, criminal offenses involving alcohol and/or drugs, such as felony intoxication manslaughter, may indicate that an individual has a chemical dependency and/or substance abuse issue. Chemical dependency and/or substance abuse may affect an individual's professional judgment and ability to practice nursing with reasonable skill and safety. As such, the Board is concerned about such conduct, and an individual with this criminal history may be subject to a Board investigation to determine what effect, if any, the offense will have on the individual's licensure status. The remaining additional offenses that have been added to the Guidelines also include an explanation of how the offense relates to the practice of nursing.

Finally, the Guidelines indicate when a particular evaluation may be required and/or requested by the Board. Pursuant to the Occupations Code §301.4521, the Board is authorized to require certain physical and/or psychological evaluations of its applicants and licensees. In the present example regarding the felony offense of intoxication manslaughter, the Guidelines specify that a chemical dependency evaluation may be required to assist the Board in determining the effect of the individual's criminal history on his/her licensure status. Although §301.4521 authorizes the Board to require and/or request physical and psychological evaluations in situations where the Board has reason to believe that an individual may be unable to practice nursing with reasonable skill and safety, additional notations have been added throughout the Guidelines to indicate the types of evaluations that the Board may request/require in matters involving a particular criminal offense. Although this additional information does not limit the Board's ability to require/request additional types of evaluations in a particular case, it is intended to provide notice to individuals that an evaluation may be required and/or requested in order to assist the Board in determining whether the individual is fit to practice nursing safely and the potential effect the particular criminal offense may have on the individual's licensure status.

The Committee also felt it was important for the Board to reiterate the purpose of the Guidelines and to emphasize their limitations. To that end, pages 1 - 3 of the Guidelines have been amended to include additional information regarding the application of the Guidelines. The Guidelines are intended to inform applicants, licensees, and the general public of the potential effect a par-

ticular criminal offense may have on nurse licensure. As such, the Guidelines are based upon criminal offenses that have already been addressed and/or adjudicated by the penal system. The Board will not re-litigate the underlying facts of the criminal matter. Therefore, the amended language makes clear that the Board will consider the potential effect of a criminal offense upon an individual's licensure status as that offense has been previously determined by the penal system.

For certain offenses, the Committee also recommended including additional information in the last column of the Guidelines to better explain the offense's connection to the practice of nursing. For example, for the offenses of "arson" and "cruelty to animals," information has been added to the last column of the Guidelines to emphasize that individuals who commit these types of criminal offenses have been linked with underlying psychopathology and/or may be more likely to engage in violent/harmful behaviors toward humans. This additional information clarifies why the Board may be concerned about an individual who has committed one of these offenses. "Aggravated perjury" and all of the prostitution offenses also include additional language better explaining their connection to the practice of nursing.

The Committee also reviewed the recommended range of sanction for each offense listed in the Guidelines. Although the Committee felt that the recommended ranges of sanctions were appropriate for the majority of the offenses, the Committee recommended that offenses primarily related to the use of drugs and/or alcohol be amended to include less severe sanctions if the individual demonstrates compliance with a treatment program and evidence of ongoing sobriety. Therefore, the Guidelines have been amended to include a broader range of recommended sanctions for these types of offenses. In particular, the amended range of sanctions for these types of offenses includes participation in a peer assistance program, as well as licensure suspension, which can either be enforced or probated, depending upon whether an individual is able to demonstrate treatment and twelve consecutive months of verifiable sobriety. These additional options are consistent with the Board's adopted Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or Other Substance Use Disorder, as well as the Board's rules regarding chemical dependency and substance abuse.

The Guidelines have also been amended to clarify the use of certain terminology within the Guidelines. In particular, the term "judicial order" has been amended to include orders of conviction, regardless of the plea entered, deferred adjudications, regardless of the plea entered, and deferred dispositions, including, but not limited to, pre-trial diversion agreements and deferred prosecutions. Further, the term "probation" has been amended to include community supervision, probation, parole, and any other requirement that results from, or is related to, a criminal disposition of any form, including deferred dispositions, such as pre-trial diversion agreements and deferred prosecutions. These amendments are intended to clarify the existing intent of the Guidelines and are consistent with the Board's authority to investigate and take licensure action based upon convictions and deferred dispositions, as set forth in the Nursing Practice Act, particularly §301.452(b)(3).

Finally, the Guidelines have been re-organized based upon recommendations by the Committee. Pages 4 - 14 of the Guidelines contain offenses that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as revocable offenses and/or potential bars to licensure. Pursuant

to the terms of §301.4535, an individual who has committed one of the crimes enumerated in §301.4535 shall not be eligible to hold a nursing license until at least five years have passed from the date the individual successfully completes and is dismissed from community supervision or parole. The remaining pages of the Guidelines are arranged alphabetically, to include both felony and misdemeanor offenses. If an offense can be classified under the penal code as either a felony or misdemeanor, the Guidelines recognize this distinction and include a corresponding range of recommended sanctions for the felony offense and the misdemeanor offense. The Committee also recommended including the definition of each crime in the first column of the Guidelines instead of the last column of the Guidelines. As such, the Guidelines have been amended to include a general definition, based upon the elements listed in the penal code, for each offense listed in the Guidelines. A legend has also been added to the second column of the Guidelines that will link a user to the penal code definitions and classifications of the terms "felonies" and "misdemeanors." Hyperlinks have also been added to the third column of the Guidelines that will link a user to the specific penal code provisions cited by the Guidelines for each criminal offense. These changes were recommended by the Committee and adopted by the Board in order to make the Guidelines more user friendly and easier to understand and navigate.

How the Section Will Function. Adopted §213.27(g)(5) provides that the Guidelines, which were approved by the Board and published on May 17, 2013, in the *Texas Register* (38 TexReg 3152) and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html>, must be used by the Executive Director, the State Office of Administrative Hearings (SOAH), and the Board in evaluating good professional character in eligibility and disciplinary matters.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority.

The amendments are adopted under the Occupations Code Chapter 53 and §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535.

Section 53.021(a) provides that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (i) an offense that directly relates to the duties and responsibilities of the licensed occupation; (ii) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license; (iii) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or (iv) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Section 53.021(b) states that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Section 53.021(c) states that, except as provided by §53.021(d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of §53.021 if, regardless of the statutory authorization: (i) the person entered a plea of guilty or nolo contendere; (ii) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of

the court or an officer under the supervision of the court; and (iii) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

Section 53.021(d) provides that a licensing authority may consider a person to have been convicted of an offense for purposes of §53.021 regardless of whether the proceedings were dismissed and the person was discharged as described by §53.021(c) if, after consideration of the factors described by §53.022 and §53.023(a), the licensing authority determines that: (i) the person may pose a continued threat to public safety; or (ii) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

Section 53.021(e) states that §53.021(c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide: (i) law enforcement or public health, education, or safety services; or (ii) financial services in an industry regulated by a person listed in §411.081(i)(19), Government Code.

Section 53.022 provides that, in determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider: (i) the nature and seriousness of the crime; (ii) the relationship of the crime to the purposes for requiring a license to engage in the occupation; (iii) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and (iv) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Section 53.023(a) states that, in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in §53.022: (i) the extent and nature of the person's past criminal activity; (ii) the age of the person when the crime was committed; (iii) the amount of time that has elapsed since the person's last criminal activity; (iv) the conduct and work activity of the person before and after the criminal activity; (v) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and (vi) other evidence of the person's fitness, including letters of recommendation from: (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; (B) the sheriff or chief of police in the community where the person resides; and (C) any other person in contact with the convicted person.

Section 53.023(b) states that the applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by §53.023(a)(6).

Section 53.023(c) states that in addition to fulfilling the requirements of §53.023(b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has: (i) maintained a record of steady employment; (ii) supported the applicant's dependents; (iii) maintained a record of good conduct; and (iv) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Section 53.025(a) states that each licensing authority shall issue guidelines relating to the practice of the licensing authority under Chapter 53. Further, the guidelines must state the reasons a particular crime is considered to relate to a particular license

and any other criterion that affects the decisions of the licensing authority.

Section 53.025(b) states that a state licensing authority that issues guidelines under §53.025 shall file the guidelines with the secretary of state for publication in the *Texas Register*.

Section 53.025(c) states that a local or county licensing authority that issues guidelines under §53.025 shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having county-wide circulation in that county.

Section 53.025(d) provides that amendments to the guidelines, if any, shall be issued annually.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1545(a) provides that the Board shall adopt rules and guidelines necessary to comply with Chapter 53, except to the extent the requirements of Subtitle E are stricter than the requirements of Chapter 53.

Section 301.1545(b) states that, in its rules under §301.1545, the Board shall list the offenses for which a conviction would constitute grounds for the Board to take action under §53.021 or for which placement on deferred adjudication community supervision would constitute grounds for the Board to take action under Chapter 301.

Section 301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a

manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) provides that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.4521(a) defines the term "applicant" as a petitioner for a declaratory order of eligibility for a license or an applicant for an initial license or renewal of a license and the term "evaluation" as a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.

Section 301.4521(b) provides that the Board may require a nurse or applicant to submit to an evaluation only if the Board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of: (i) physical impairment; (ii) mental impairment; or (iii) chemical dependency or abuse of drugs or alcohol.

Section 301.4521(c) provides that a demand for an evaluation under §301.4521(b) must be in writing and state: (i) the reasons probable cause exists to require the evaluation; and (ii) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

Section 301.4521(d) states that, if the nurse or applicant refuses to submit to the evaluation, the Board shall schedule a hearing on the issue of probable cause to be conducted by SOAH. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the Board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The Board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the Board's demand for an evaluation. The order may not be vacated or modified under the Government Code §2001.058.

Section 301.4521(e) states that, if a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under §301.4521(d), the Board may: (i) refuse to issue or renew a license; (ii) suspend a license; or (iii) issue an order limiting the license.

Section 301.4521(f) provides that the Board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the Board for a reason other than a reason listed in §301.4521(b). A request for an evaluation under §301.4521(f) must be in writing and state: (i) the reasons for the request; (ii) the type of evaluation requested; (iii) how the Board may use the evaluation; (iv) that the nurse or applicant may refuse to submit to an evaluation; and (v) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

Section 301.4521(g) states that, if a nurse or applicant refuses to consent to an evaluation under §301.4521(f), the nurse or appli-

cant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant: (i) not later than the 30th day before the date of the hearing, notifies the Board that an evaluation will be introduced into evidence at the hearing; (ii) provides the Board the results of that evaluation; (iii) informs the Board of any other evaluations by any other practitioners; and (iv) consents to an evaluation by a practitioner that meets Board standards established under §301.4521(h).

Section 301.4521(h) provides that the Board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under §301.4521. The Board shall maintain a list of qualified practitioners. The Board may solicit qualified practitioners located throughout the state to be on the list.

Section 301.4521(i) states that a nurse or applicant shall pay the costs of an evaluation conducted under §301.4521.

Section 301.4521(j) provides that the results of an evaluation under §301.4521 are: (i) confidential and not subject to disclosure under the Government Code Chapter 552; (ii) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be: (A) introduced as evidence in a proceeding before the Board or a hearing conducted by SOAH under Chapter 301; or (B) included in the findings of fact and conclusions of law in a final Board order.

Section 301.4521(k) provides that, if the Board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under §301.4521, the evaluation must be expunged from the Board's records.

Section 301.4521(l) requires the Board to adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under §301.4521.

Section 301.4521(m) states that the authority granted to the Board under §301.4521 is in addition to the Board's authority to make licensing decisions under Chapter 301.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic Board review; (v) suspension of the person's license for a period not to exceed five years; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

Section 301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors.

Section 301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

Section 301.4535(a) provides that the Board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of: (i) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code; (ii) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony; (iii) sexual assault under Section 22.011, Penal Code; (iv) aggravated sexual assault under Section 22.021, Penal Code; (v) continuous sexual abuse of young child or children under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code; (vi) aggravated assault under Section 22.02, Penal Code; (vii) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code; (viii) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code; (ix) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony; (x) an offense under Section 25.07, Penal Code, punished as a felony; (xi) an offense under Section 25.071, Penal Code, punished as a felony; (xii) an agreement to abduct a child from custody under Section 25.031, Penal Code; (xiii) the sale or purchase of a child under Section 25.08, Penal Code; (xiv) robbery under Section 29.02, Penal Code; (xv) aggravated robbery under Section 29.03, Penal Code; (xvi) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (xvii) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

Section 301.4535(a-1) states that an applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under §301.4535(a) is not eligible for a pro-

bationary, stipulated, or otherwise encumbered license unless the Board establishes by rule criteria that would permit the issuance or renewal of the license.

Section 301.4535(b) states that on final conviction or a plea of guilty or nolo contendere for an offense listed in §301.4535(a), the Board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

Section 301.4535(c) states that a person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by §301.4535(a).

§213.27. *Good Professional Character.*

(a) Good professional character is the integrated pattern of personal, academic and occupational behaviors which, in the judgment of the Board, indicates that an individual is able to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity.

(b) Factors to be used in evaluating good professional character in eligibility and disciplinary matters are:

(1) Good professional character is determined through the evaluation of behaviors demonstrated by an individual in his or her personal, academic and occupational history. An individual's age, education, and experience necessarily affect the nature and extent of behavioral history and, therefore, shall be considered in each evaluation.

(2) A person who seeks to obtain or retain a license to practice professional or vocational nursing shall provide evidence of good professional character which, in the judgment of the Board, is sufficient to insure that the individual can consistently act in the best interest of patients/clients and the public in any practice setting. Such evidence shall establish that the person:

- (A) is able to distinguish right from wrong;
- (B) is able to think and act rationally;
- (C) is able to keep promises and honor obligations;
- (D) is accountable for his or her own behavior;
- (E) is able to practice nursing in an autonomous role with patients/clients, their families, significant others, and members of the public who are or who may become physically, emotionally, or financially vulnerable;

(F) is able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting; and

(G) is able to promptly and fully self-disclose facts, circumstances, events, errors, and omissions when such disclosure could enhance the health status of patients/clients or the public or could protect patients/clients or the public from unnecessary risk of harm.

(3) Any conviction for a felony or for a misdemeanor involving moral turpitude or order of probation with or without an adjudication of guilt for an offense that would be a felony or misdemeanor involving moral turpitude if guilt were adjudicated.

(4) Any revocation, suspension, or denial of, or any other adverse action relating to, the person's license or privilege to practice nursing in another jurisdiction.

(c) The following provisions shall govern the determination of present good professional character and fitness of a Petitioner, Applicant, or Licensee who has been convicted of a felony in Texas or placed on probation for a felony with or without an adjudication of guilt in Texas, or who has been convicted or placed on probation with or without an adjudication of guilt in another jurisdiction for a crime which would be a felony in Texas. A Petitioner, Applicant, or Licensee may be found lacking in present good professional character and fitness under this rule based on the underlying facts of a felony conviction or deferred adjudication, as well as based on the conviction or probation through deferred adjudication itself.

(1) The record of conviction or order of deferred adjudication is conclusive evidence of guilt.

(2) In addition to the disciplinary remedies available to the Board pursuant to Tex. Occ. Code Ann. §301.452(b)(3) and (4), Texas Occupations Code chapter 53, and §213.28, a licensee guilty of a felony under this rule is conclusively deemed to have violated Tex. Occ. Code Ann. §301.452(b)(10) and is subject to appropriate discipline, up to and including revocation.

(d) The following provisions shall govern the determination of present good professional character and fitness of a Petitioner, Applicant, or Licensee who has been licensed to practice nursing in any jurisdiction and has been disciplined, or allowed to voluntarily surrender in lieu of discipline, in that jurisdiction.

(1) A certified copy of the order, judgment of discipline, or order of adverse licensure action from the jurisdiction is prima facie evidence of the matters contained in such order, judgment, or adverse action and is conclusive evidence that the individual in question has committed professional misconduct as alleged in such order of judgment.

(2) An individual disciplined for professional misconduct in the course of practicing nursing in any jurisdiction or an individual who resigned in lieu of disciplinary action (disciplined individual) is deemed not to have present good professional character and fitness and is, therefore, ineligible to file an Application for Endorsement to the Texas Board of Nursing during the period of such discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the disciplined individual has filed an application for reinstatement in the disciplining jurisdiction and obtained a final determination on that application.

(3) The only defenses available to a Petitioner, Applicant, or Licensee under section (d) are outlined below and must be proved by clear and convincing evidence:

(A) The procedure followed in the disciplining jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.

(B) There was such an infirmity of proof establishing the misconduct in the other jurisdiction as to give rise to the clear conviction that the Board, consistent with its duty, should not accept as final the conclusion on the evidence reached in the disciplining jurisdiction.

(C) The deeming of lack of present good professional character and fitness by the Board during the period required under the provisions of section (d) would result in grave injustice.

(D) The misconduct for which the individual was disciplined does not constitute professional misconduct in Texas.

(4) If the Board determines that one or more of the foregoing defenses has been established, it shall render such orders as it deems necessary and appropriate.

(e) An individual who applies for initial licensure, reinstatement, renewal, or endorsement to practice professional or vocational nursing in Texas after the expiration of the three-year period in subsection (f) of this section, or after the completion of the disciplinary period assessed or ineligibility period imposed by any jurisdiction under subsection (d) of this section shall be required to prove, by a preponderance of the evidence:

(1) that the best interest of the public and the profession, as well as the ends of justice, would be served by his or her admission to practice nursing; and

(2) that (s)he is of present good professional character and fitness.

(f) An individual who applies for initial licensure, reinstatement, renewal, or endorsement to practice professional or vocational nursing in Texas after a negative determination based on a felony conviction, felony probation with or without an adjudication of guilt, or professional misconduct, or voluntary surrender in lieu of disciplinary action and whose application or petition is denied and not appealed is not eligible to file another petition or application for licensure until after the expiration of three years from the date of the Board's order denying the preceding petition for licensure.

(g) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), and the Board in evaluating good professional character in eligibility and disciplinary matters:

(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on May 17, 2013, in the *Texas Register* (38 TexReg 3152) and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html>.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §213.28

Introduction. The Texas Board of Nursing (Board) adopts amendments to §213.28, concerning Licensure of Persons with Criminal Offenses. Specifically, the adopted amendment affects the Board's Disciplinary Guidelines for Criminal Conduct (Guidelines), which are incorporated by reference in adopted §213.28(m)(5). The amendment to §213.28(m)(5) was published in the May 17, 2013, issue of the *Texas Register* (38 TexReg 2948). The Guidelines were also published in the May 17, 2013, issue of the *Texas Register* (38 TexReg 3152). The amendment to §213.28(m)(5) is adopted with changes, as set out herein. The Guidelines are adopted without changes and will not be republished.

Reasoned Justification. The amendment is adopted under the authority of the Occupations Code §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535; and the Occupations Code Chapter 53, particularly §53.025(a), which requires licensing agencies to issue guidelines that state the reasons that a particular crime is considered to relate to the practice of the licensing agency and any other criterion that affects the decision of the licensing agency when considering the effects of the crime on an individual's licensure status.

The Board formally proposed an amendment to §213.28(m)(5) in the May 17, 2013, issue of the *Texas Register* (38 TexReg 2948). The Board has made minor changes to the proposed text as adopted in order to more specifically reference the particular issue of the *Texas Register* in which the Guidelines were published. As such, adopted §213.28(m)(5) includes a reference to the publication date and page number of the specific issue of the *Texas Register* in which the Guidelines were published. None of these changes, however, materially alters issues raised in the proposal, introduces new subject matter, or affects persons other than those previously on notice. Further, no changes were made to the Guidelines, and the Guidelines are adopted as they appeared in the May 17, 2013, issue of the *Texas Register* (38 TexReg 3152).

Background.

The Guidelines were originally approved by the Board and published in the *Texas Register* on March 9, 2007 (32 TexReg 1409). The Board received no public comments on the Guidelines, and, on July 2, 2008, adopted the Guidelines by reference in §213.28(m)(5) (33 TexReg 5007). The Guidelines have not undergone formal review and amendment since their original publication date in 2007. As a result, at its April 2012 meeting, the Board issued a charge to the Eligibility and Disciplinary Advisory Committee (Committee) to review and make recommendations regarding the Guidelines. In particular, the Board charged the Committee with considering: (i) whether portions of the Guidelines were outdated/obsolete; (ii) whether the Guidelines should establish a minimally acceptable sanction for each criminal offense; (iii) whether the recommended range of sanctions in the Guidelines were appropriate; and (iv) the type and/or amount of mitigating evidence necessary to support a more lenient sanction under the Guidelines.

The Committee met on November 30, 2012; February 8, 2013; and March 25, 2013 to review the Guidelines. Following a detailed review and discussion of the Guidelines, the Committee voted unanimously to recommend several changes to the Board. The Committee's recommended changes to the Guidelines, along with minor editorial/typographical changes identified by

Board Staff, were presented to the Board at its April 2013 meeting. The Board voted to adopt the Guidelines, as amended, and propose amendments to §213.28(m) to incorporate the adopted changes into rule.

Many of the changes to the Guidelines are editorial and organizational in nature. However, some of the changes are more substantive. First, thirty-five new criminal offenses have been added to the Guidelines. These offenses include various felonies and misdemeanors, as well as crimes that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as affecting nursing licensure. The additional crimes include: continuous sexual abuse of young child or children (§301.4535(a)(5)); offenses for which registration as a sex offender is required under the Code of Criminal Procedure Chapter 62 (§301.4535(a)(16)); aggravated perjury (felony); bail jumping and failure to appear (felony/misdemeanor); bribery (felony); burglary of vehicles (felony/misdemeanor); credit card/debit card abuse (felony); criminal nonsupport (felony); driving while intoxicated with child passenger (felony); evading arrest or detention (felony/misdemeanor); failure to identify (misdemeanor); fraudulent destruction, removal, or concealment of writing (felony/misdemeanor); fraudulent use of possession of identifying information (felony); harboring runaway child (misdemeanor); hindering apprehension or prosecution (felony/misdemeanor); hindering secured creditors (felony/misdemeanor); interference with child custody (felony); intoxication assault (felony); intoxication manslaughter (felony); misapplication of fiduciary property or property of financial institution (felony/misdemeanor); obstruction or retaliation (felony); perjury (misdemeanor); prohibited substances and items in correctional facility (felony); prohibited weapon (felony/misdemeanor); public lewdness (misdemeanor); securing execution of document by deception (felony/misdemeanor); smuggling of persons (felony); tampering with or fabricating physical evidence (felony/misdemeanor); tampering with witness (felony); theft of service (felony/misdemeanor); trafficking of persons (felony); unlawful carrying weapon (felony/misdemeanor); unlawful possession of firearm (felony/misdemeanor); unlawful restraint (misdemeanor); and violation of civil rights of person in custody/improper sexual acts with a person in custody (felony/misdemeanor).

Pursuant to the Occupations Code Chapters 53 and 301 (Nursing Practice Act), criminal offenses may affect an individual's ability to obtain a nursing license (licensure eligibility) and a nurse's licensure status (licensure discipline). Board Staff routinely review individuals' criminal history to determine what effect, if any, a particular offense may have in eligibility and disciplinary cases. The thirty-five new offenses that were recommended by the Committee and approved by the Board are offenses that Board Staff have identified over the last few years during its review of eligibility and disciplinary files. These offenses have occurred frequently enough over the last few years to warrant inclusion in the Guidelines. Further, the Board has determined that these additional offenses are sufficiently related to the practice of nursing and are serious enough in nature to warrant investigation and, possibly, denial of licensure and/or licensure discipline.

In addition to including these additional crimes in the Guidelines, corresponding sanction recommendations and explanatory rationale has been included as well. For example, the felony offense of intoxication manslaughter has been added to the Guidelines. As stated in the Guideline's preamble, although the Guidelines provide a recommended range of sanctions for each of-

fense, each case is considered on its own merits. As such, the appropriate sanction in any given case will be determined upon a consideration of the aggravating and/or mitigating factors present in that case. For the offense of felony intoxication manslaughter, and depending upon the length of time that has transpired since the judicial order associated with the offense was issued, the recommended sanction range includes licensure denial or revocation, as well as options for licensure discipline. The remaining additional offenses that have been added to the Guidelines also include a corresponding recommended range of sanctions that will include an analysis of the mitigating and/or aggravating factors unique to each case.

The Guidelines also explain how each of the additional offenses are related to the practice of nursing. Using the previous example, criminal offenses involving alcohol and/or drugs, such as felony intoxication manslaughter, may indicate that an individual has a chemical dependency and/or substance abuse issue. Chemical dependency and/or substance abuse may affect an individual's professional judgment and ability to practice nursing with reasonable skill and safety. As such, the Board is concerned about such conduct, and an individual with this criminal history may be subject to a Board investigation to determine what effect, if any, the offense will have on the individual's licensure status. The remaining additional offenses that have been added to the Guidelines also include an explanation of how the offense relates to the practice of nursing.

Finally, the Guidelines indicate when a particular evaluation may be required and/or requested by the Board. Pursuant to the Occupations Code §301.4521, the Board is authorized to require certain physical and/or psychological evaluations of its applicants and licensees. In the present example regarding the felony offense of intoxication manslaughter, the Guidelines specify that a chemical dependency evaluation may be required to assist the Board in determining the effect of the individual's criminal history on his/her licensure status. Although §301.4521 authorizes the Board to require and/or request physical and psychological evaluations in situations where the Board has reason to believe that an individual may be unable to practice nursing with reasonable skill and safety, additional notations have been added throughout the Guidelines to indicate the types of evaluations that the Board may request/require in matters involving a particular criminal offense. Although this additional information does not limit the Board's ability to require/request additional types of evaluations in a particular case, it is intended to provide notice to individuals that an evaluation may be required and/or requested in order to assist the Board in determining whether the individual is fit to practice nursing safely and the potential effect the particular criminal offense may have on the individual's licensure status.

The Committee also felt it was important for the Board to reiterate the purpose of the Guidelines and to emphasize their limitations. To that end, pages 1 - 3 of the Guidelines have been amended to include additional information regarding the application of the Guidelines. The Guidelines are intended to inform applicants, licensees, and the general public of the potential effect a particular criminal offense may have on nurse licensure. As such, the Guidelines are based upon criminal offenses that have already been addressed and/or adjudicated by the penal system. The Board will not re-litigate the underlying facts of the criminal matter. Therefore, the amended language makes clear that the Board will consider the potential effect of a criminal offense upon an individual's licensure status as that offense has been previously determined by the penal system.

For certain offense, the Committee also recommended including additional information in the last column of the Guidelines to better explain the offense's connection to the practice of nursing. For example, for the offenses of "arson" and "cruelty to animals", information has been added to the last column of the Guidelines to emphasize that individuals who commit these types of criminal offenses have been linked with underlying psychopathology and/or may be more likely to engage in violent/harmful behaviors toward humans. This additional information clarifies why the Board may be concerned about an individual who has committed one of these offenses. "Aggravated perjury" and all of the prostitution offenses also include additional language better explaining their connection to the practice of nursing.

The Committee also reviewed the recommended range of sanction for each offense listed in the Guidelines. Although the Committee felt that the recommended ranges of sanctions were appropriate for the majority of the offenses, the Committee recommended that offenses primarily related to the use of drugs and/or alcohol be amended to include less severe sanctions if the individual demonstrates compliance with a treatment program and evidence of ongoing sobriety. Therefore, the Guidelines have been amended to include a broader range of recommended sanctions for these types of offenses. In particular, the amended range of sanctions for these types of offenses includes participation in a peer assistance program, as well as licensure suspension, which can either be enforced or probated, depending upon whether an individual is able to demonstrate treatment and twelve consecutive months of verifiable sobriety. These additional options are consistent with the Board's adopted Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or Other Substance Use Disorder, as well as the Board's rules regarding chemical dependency and substance abuse.

The Guidelines have also been amended to clarify the use of certain terminology within the Guidelines. In particular, the term "judicial order" has been amended to include orders of conviction, regardless of the plea entered, deferred adjudications, regardless of the plea entered, and deferred dispositions, including, but not limited to, pre-trial diversion agreements and deferred prosecutions. Further, the term "probation" has been amended to include community supervision, probation, parole, and any other requirement that results from, or is related to, a criminal disposition of any form, including deferred dispositions, such as pre-trial diversion agreements and deferred prosecutions. This amendment is intended to clarify the existing intent of the Guidelines and is consistent with the Board's authority to investigate and take licensure action based upon convictions and deferred dispositions, as set forth in the Nursing Practice Act, particularly §301.452(b)(3).

Finally, the Guidelines have been reorganized based upon recommendations by the Committee. Pages 4 - 14 of the Guidelines contain offenses that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as revocable offenses and/or potential bars to licensure. Pursuant to the terms of §301.4535, an individual who has committed one of the crimes enumerated in §301.4535 shall not be eligible to hold a nursing license until at least five years have passed from the date the individual successfully completes and is dismissed from community supervision or parole. The remaining pages of the Guidelines are arranged alphabetically, to include both felony and misdemeanor offenses. If an offense can be classified under the penal code as either a felony or misdemeanor, the Guidelines recognize this distinction and include a correspond-

ing range of recommended sanctions for the felony offense and the misdemeanor offense. The Committee also recommended including the definition of each crime in the first column of the Guidelines instead of the last column of the Guidelines. As such, the Guidelines have been amended to include a general definition, based upon the elements listed in the penal code, for each offense listed in the Guidelines. A legend has also been added to the second column of the Guidelines that will link a user to the penal code definitions and classifications of the terms "felonies" and "misdemeanors". Hyperlinks have also been added to the third column of the Guidelines that will link a user to the specific penal code provisions cited by the Guidelines for each criminal offense. These changes were recommended by the Committee and adopted by the Board in order to make the Guidelines more user friendly and easier to understand and navigate.

How the Sections Will Function. Adopted §213.28(m)(5) provides that the Guidelines, which were approved by the Board and published on May 17, 2013, in the *Texas Register* (38 TexReg 3152) and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html>, must be used by the Executive Director, the State Office of Administrative Hearings (SOAH), and the Board in evaluating the impact of criminal conduct on nurse licensure in eligibility and disciplinary matters.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority.

The amendment is adopted under the Occupations Code Chapter 53 and §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535.

Section 53.021(a) provides that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (i) an offense that directly relates to the duties and responsibilities of the licensed occupation; (ii) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license; (iii) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or (iv) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Section 53.021(b) states that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Section 53.021(c) states that, except as provided by §53.021(d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of §53.021 if, regardless of the statutory authorization: (i) the person entered a plea of guilty or nolo contendere; (ii) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and (iii) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

Section 53.021(d) provides that a licensing authority may consider a person to have been convicted of an offense for purposes of §53.021 regardless of whether the proceedings were dismissed and the person was discharged as described

by §53.021(c) if, after consideration of the factors described by §53.022 and §53.023(a), the licensing authority determines that: (i) the person may pose a continued threat to public safety; or (ii) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

Section 53.021(e) states that §53.021(c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide: (i) law enforcement or public health, education, or safety services; or (ii) financial services in an industry regulated by a person listed in §411.081(i)(19), Government Code.

Section 53.022 provides that, in determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider: (i) the nature and seriousness of the crime; (ii) the relationship of the crime to the purposes for requiring a license to engage in the occupation; (iii) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and (iv) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Section 53.023(a) states that, in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in §53.022: (i) the extent and nature of the person's past criminal activity; (ii) the age of the person when the crime was committed; (iii) the amount of time that has elapsed since the person's last criminal activity; (iv) the conduct and work activity of the person before and after the criminal activity; (v) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and (vi) other evidence of the person's fitness, including letters of recommendation from: (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; (B) the sheriff or chief of police in the community where the person resides; and (C) any other person in contact with the convicted person.

Section 53.023(b) states that the applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by §53.023(a)(6).

Section 53.023(c) states that in addition to fulfilling the requirements of §53.023(b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has: (i) maintained a record of steady employment; (ii) supported the applicant's dependents; (iii) maintained a record of good conduct; and (iv) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Section 53.025(a) states that each licensing authority shall issue guidelines relating to the practice of the licensing authority under Chapter 53. Further, the guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Section 53.025(b) states that a state licensing authority that issues guidelines under §53.025 shall file the guidelines with the secretary of state for publication in the *Texas Register*.

Section 53.025(c) states that a local or county licensing authority that issues guidelines under §53.025 shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having county-wide circulation in that county.

Section 53.025(d) provides that amendments to the guidelines, if any, shall be issued annually.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1545(a) provides that the Board shall adopt rules and guidelines necessary to comply with Chapter 53, except to the extent the requirements of Subtitle E are stricter than the requirements of Chapter 53.

Section 301.1545(b) states that, in its rules under §301.1545, the Board shall list the offenses for which a conviction would constitute grounds for the Board to take action under §53.021 or for which placement on deferred adjudication community supervision would constitute grounds for the Board to take action under Chapter 301.

Section 301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) provides that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.4521(a) defines the term "applicant" as a petitioner for a declaratory order of eligibility for a license or an applicant for an initial license or renewal of a license and the term "evaluation" as a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.

Section 301.4521(b) provides that the Board may require a nurse or applicant to submit to an evaluation only if the Board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of: (i) physical impairment; (ii) mental impairment; or (iii) chemical dependency or abuse of drugs or alcohol.

Section 301.4521(c) provides that a demand for an evaluation under §301.4521(b) must be in writing and state: (i) the reasons probable cause exists to require the evaluation; and (ii) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

Section 301.4521(d) states that, if the nurse or applicant refuses to submit to the evaluation, the Board shall schedule a hearing on the issue of probable cause to be conducted by SOAH. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the Board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The Board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the Board's demand for an evaluation. The order may not be vacated or modified under the Government Code §2001.058.

Section 301.4521(e) states that, if a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under §301.4521(d), the Board may: (i) refuse to issue or renew a license; (ii) suspend a license; or (iii) issue an order limiting the license.

Section 301.4521(f) provides that the Board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the Board for a reason other than a reason listed in §301.4521(b). A request for an evaluation under §301.4521(f) must be in writing and state: (i) the reasons for the request; (ii) the type of evaluation requested; (iii) how the Board may use the evaluation; (iv) that the nurse or applicant may refuse to submit to an evaluation; and (v) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

Section 301.4521(g) states that, if a nurse or applicant refuses to consent to an evaluation under §301.4521(f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant: (i) not later than the 30th day before the date of the hearing, notifies the Board that an evaluation will be introduced into evidence at the hearing; (ii) provides the Board the results of that evaluation; (iii) informs

the Board of any other evaluations by any other practitioners; and (iv) consents to an evaluation by a practitioner that meets Board standards established under §301.4521(h).

Section 301.4521(h) provides that the Board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under §301.4521. The Board shall maintain a list of qualified practitioners. The Board may solicit qualified practitioners located throughout the state to be on the list.

Section 301.4521(i) states that a nurse or applicant shall pay the costs of an evaluation conducted under §301.4521.

Section 301.4521(j) provides that the results of an evaluation under §301.4521 are: (i) confidential and not subject to disclosure under the Government Code Chapter 552; (ii) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be: (A) introduced as evidence in a proceeding before the Board or a hearing conducted by SOAH under Chapter 301; or (B) included in the findings of fact and conclusions of law in a final Board order.

Section 301.4521(k) provides that, if the Board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under §301.4521, the evaluation must be expunged from the Board's records.

Section 301.4521(l) requires the Board to adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under §301.4521.

Section 301.4521(m) states that the authority granted to the Board under §301.4521 is in addition to the Board's authority to make licensing decisions under Chapter 301.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic Board review; (v) suspension of the person's license for a period not to exceed five years; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

Section 301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors.

Section 301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

Section 301.4535(a) provides that the Board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of: (i) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code; (ii) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony; (iii) sexual assault under Section 22.011, Penal Code; (iv) aggravated sexual assault under Section 22.021, Penal Code; (v) continuous sexual abuse of young child or children under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code; (vi) aggravated assault under Section 22.02, Penal Code; (vii) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code; (viii) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code; (ix) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony; (x) an offense under Section 25.07, Penal Code, punished as a felony; (xi) an offense under Section 25.071, Penal Code, punished as a felony; (xii) an agreement to abduct a child from custody under Section 25.031, Penal Code; (xiii) the sale or purchase of a child under Section 25.08, Penal Code; (xiv) robbery under Section 29.02, Penal Code; (xv) aggravated robbery under Section 29.03, Penal Code; (xvi) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (xvii) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

Section 301.4535(a-1) states that an applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under §301.4535(a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the Board establishes by rule criteria that would permit the issuance or renewal of the license.

Section 301.4535(b) states that on final conviction or a plea of guilty or nolo contendere for an offense listed in §301.4535(a), the Board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

Section 301.4535(c) states that a person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by §301.4535(a).

§213.28. *Licensure of Persons with Criminal Offenses.*

(a) This section sets out the considerations and criteria in determining the effect of criminal offenses on the eligibility of a person to obtain a license and the consequences that criminal offenses may have on a person's ability to retain or renew a license as a registered nurse or licensed vocational nurse. The Board may refuse to approve persons to take the licensure examination, may refuse to issue or renew a license or certificate of registration, or may refuse to issue a temporary permit to any individual that has been convicted of or received a deferred disposition for a felony, a misdemeanor involving moral turpitude, or engaged in conduct resulting in the revocation of probation.

(b) The practice of nursing involves clients, their families, significant others and the public in diverse settings. The registered and vocational nurse practices in an autonomous role with individuals who are physically, emotionally and financially vulnerable. The nurse has access to personal information about all aspects of a person's life, resources and relationships. Therefore, criminal behavior whether violent or non-violent, directed against persons, property or public order and decency is considered by the Board as highly relevant to an individual's fitness to practice nursing. The Board considers the following categories of criminal conduct to relate to and affect the practice of nursing:

(1) offenses against the person similar to those outlined in Title 5 of the Texas Penal Code.

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:

- (i) Abandonment/Endangerment of a Child {TPC §22.041}
- (ii) Agree to Abduct Child for Remuneration: Younger than Eighteen {TPC §25.031}
- (iii) Aiding Suicide: Serious Bodily Injury/Death {TPC §22.08}
- (iv) Assault, Aggravated {TPC §22.02}
- (v) Capital Murder {TPC §19.03}
- (vi) Child Pornography, Possession or Promotion {TPC §43.26(a), (e) (Texas Rules of Criminal Procedure Ch. 62)}
- (vii) Indecency with a Child {TPC §21.11 (TRCP Ch. 62)}
- (viii) Indecent exposure (2 or more counts and/or required to register as sex offender) {TPC §21.08 (TRCP Ch. 62)}
- (ix) Injury to Child, Elderly, Disabled {TPC §22.04}
- (x) Kidnapping {TPC §20.03, §20.04 (TRCP Ch. 62)}
- (xi) Manslaughter {TPC §19.04}
- (xii) Murder {TPC §19.02}

- (xiii) Online Solicitation of a Minor {TPC §33.021(b), (c), (f); (TRCP Ch. 62)}
- (xiv) Prostitution, Compelling {TPC §43.05 (TRCP Ch. 62)}
- (xv) Protective Order, Violation {TPC §25.07, §25.071}
- (xvi) Sale or Purchase of a Child {TPC §25.08}
- (xvii) Sexual Assault {TPC §22.011 (TRCP Ch. 62)}
- (xviii) Sexual Conduct, Prohibited {TPC §25.02 (TRCP Ch. 62)}
- (xix) Sexual Assault, Aggravated {TPC §22.021 (TRCP Ch. 62)}
- (xx) Sexual Performance by Child {TPC §43.24 (d), §43.25(b) (TRCP Ch. 62)}
- (xxi) Unlawful Restraint {TPC §0.02}
- (xxii) Assault {TPC §22.01(a)(1), (b), (c)}
- (xxiii) Criminally negligent homicide {TPC §19.05}
- (xxiv) Improper Relationship between Educator and Student {TPC §21.12}
- (xxv) Improper photography {TPC §21.15}
- (xxvi) Obscenity, Wholesale promotion {TPC §43.23(a), (h)}
- (xxvii) Prostitution (3 or more counts) or Aggravated Promotion {TPC §43.02, §43.04}
- (xxviii) Resisting Arrest, Use of Deadly Weapon {TPC §38.03(d)}
- (xxix) Stalking {TPC §42.072(b)}
- (xxx) Harassment {TPC §42.07}
- (xxxi) Prostitution or Promotion of {TPC §43.02}
- (xxxii) Protective Order, Violation {TPC §25.07, §38.112}
- (xxxiii) Resisting Arrest {TPC §38.03(a)}
- (xxxiv) Deadly conduct {TPC §22.05(a)}
- (xxxv) Obscenity, Participates {TPC §43.23(c), (h)}
- (xxxvi) Terroristic Threat {TPC §22.07}
- (xxxvii) Criminal Attempt or Conspiracy {TPC §15.01, §15.02}

(B) These types of crimes relate to the practice of nursing because:

- (i) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;
- (ii) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized and may be subject to harm by similar criminal behavior;

(iii) nurses are frequently in situations where they provide intimate care to patients or have contact with partially clothed or fully undressed patients who are vulnerable to exploitation both physically and emotionally;

(iv) nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability; and

(v) nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat that same misconduct in the workplace and raises concerns regarding the individual's ability to provide safe, competent care to patients.

(2) offenses against property, e.g., robbery, burglary and theft, etc.

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:

(i) Burglary (if punishable under Penal Code §30.02(d)) {TRCP Ch. 62 (§62.001(5)(D))}

(ii) Robbery {TPC §29.02}

(iii) Robbery, Aggravated {TPC §29.03}

(iv) Arson {TPC §28.02(d)}

(v) Burglary {TPC §30.02}

(vi) Criminal Mischief {TPC §28.03}

(vii) Money Laundering \geq \$1500 {TPC §34.02(e)(1) - (4)}

(viii) Theft \geq \$1500 {TPC §31.03(e)(4) - (7)}

(ix) Theft < 9 {TPC §31.03(e)(1) - (3)}

(x) Vehicle, Unauthorized Use {TPC §31.07}

(xi) Criminal Trespass {TPC §30.05(a),(d)}

(xii) Cruelty to Animals {TPC §42.091}

(xiii) Criminal Attempt or Conspiracy {TPC §15.01, §15.02}

(B) These types of crimes relate to the practice of nursing because:

(i) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;

(ii) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized and may provide easy opportunity to be victimized;

(iii) nurses have access to persons who frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility with no security to prevent theft or exploitation;

(iv) nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse;

(v) nurses frequently provide care autonomously without direct supervision and may have access to and opportunity to misappropriate property; and

(vi) nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat that same misconduct in the workplace and, therefore, place patients' property at risk.

(vii) certain crimes involving property, such as cruelty to animals and criminal trespass, may also concern the safety of persons and, as such, raise concerns about the propensity of the nurse to repeat similar conduct in the workplace, placing patients at risk.

(3) offenses involving fraud or deception.

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:

(i) Attempt, Conspiracy, or Solicitation of Ch. 62 offense {TRCP Ch. 62}

(ii) Tampering with a Government Record {TPC §37.10}

(iii) Insurance Fraud: Intent to Defraud {TPC §35.02(a-1), (d)}

(iv) Insurance Fraud: Claim > \$500 {TPC §35.02(c)}

(v) Insurance Fraud: Claim < 0 {TPC §35.02 (c)(1) - (3)}

(vi) Medicaid Fraud > \$1500 {TPC §35A.02(b)(4) - (7)}

(vii) Medicaid Fraud < \$1500 {TPC §35A.02(b)(2) - (3)}

(viii) Criminal Attempt or Conspiracy {TPC §15.01, §15.02}

(B) These types of crime relate to the practice of nursing because:

(i) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;

(ii) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;

(iii) nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability;

(iv) nurses are frequently in situations where they must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct;

(v) the nurse-patient relationship is of a dependent nature; and

(vi) nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat that same misconduct in the workplace and, therefore, place patients at risk.

(4) offenses involving lying and falsification.

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:

(i) False Report or Statement {TPC §32.32, §42.06}

- (ii) Forgery {TPC §32.21(c), (d), (e)}
- (iii) Tampering with a Governmental Record {TPC §37.10}

(B) These crimes are related to nursing because:

(i) nurses have access to persons who are vulnerable by virtue of illness or injury;

(ii) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;

(iii) nurses are frequently in situations where they must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct;

(iv) honesty, accuracy and integrity are personal traits valued by the nursing profession, and considered imperative for the provision of safe and effective nursing care;

(v) falsification of documents regarding patient care, incomplete or inaccurate documentation of patient care, failure to provide the care documented, or other acts of deception raise serious concerns whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future;

(vi) falsification of employment applications and failing to answer specific questions that would have affected the decision to employ, certify, or otherwise utilize a nurse raises concerns about a nurse's propensity to lie and whether the nurse possesses the qualities of honesty and integrity;

(vii) falsification of documents or deception/lying outside of the workplace, including falsification of an application for licensure to the Board, raises concerns about the person's propensity to lie, and the likelihood that such conduct will continue in the practice of nursing; and

(viii) a crime of lying or falsification raises concerns about the nurse's propensity to engage in similar conduct while practicing nursing and place patients at risk.

(5) offenses involving the delivery, possession, manufacture, or use of, or dispensing or prescribing a controlled substance, dangerous drug, or mood-altering substance.

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:

(i) Drug Violations under Health and Safety Code Chs. 481, 482, 483; or

(ii) Driving While Intoxicated (2 or more counts) {TPC §49.09}

(B) These crimes relate to the practice of nursing because:

(i) nurses have access to persons who are vulnerable by virtue of illness or injury;

(ii) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;

(iii) nurses provide care to critical care, geriatric, and pediatric patients who are particularly vulnerable given the level of vigilance demanded under the circumstances of their health condition;

(iv) nurses are able to provide care in private homes and home-like setting without supervision;

(v) nurses who are chemically dependent or who abuse drugs or alcohol may have impaired judgment while caring for patients and are at risk for harming patients; and

(vi) an offense regarding delivery, possession, manufacture, or use of, or dispensing, or prescribing a controlled substance, dangerous drug or mood altering drug raises concern about the nurse's propensity to repeat that same misconduct in the workplace.

(vii) DWI offenses involve the use and/or abuse of mood altering drugs while performing a state licensed activity affecting public safety; repeated violations suggest a willingness to continue in reckless and dangerous conduct, or an unwillingness to take appropriate corrective measures, despite previous disciplinary action by the state.

(c) In considering whether a criminal offense renders the individual ineligible for licensure or renewal of licensure as a registered or vocational nurse, the Board shall consider:

(1) the knowing or intentional practice of nursing without a license issued under the NPA;

(2) any felony or misdemeanor involving moral turpitude;

(3) the nature and seriousness of the crime;

(4) the relationship of the crime to the purposes for requiring a license to engage in nursing practice;

(5) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(6) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of nursing practice;

(7) whether imprisonment followed a felony conviction, felony community supervision revocation, revocation of parole or revocation of mandatory supervision; and

(8) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude.

(d) Crimes listed under subsections (b)(1)(A)(i) - (xxi), (b)(2)(A)(i) - (iii), and (b)(3)(A)(i) of this section are offenses identified under §301.4535 of the NPA. As such, these offenses require the board to suspend a nurse's license, revoke a license, or deny issuing a license to an applicant upon proof of initial conviction.

(e) In addition to the factors that may be considered under subsection (c) of this section, the Board, in determining the present fitness of a person who has been convicted of or received a deferred order for a crime, shall consider:

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

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

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

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and

(6) other evidence of the person's present fitness, including letters of recommendation from: prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(f) It shall be the responsibility of the applicant, to the extent possible, to obtain and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities as required under this Act. The applicant shall also furnish proof in such form as may be required by the Board that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted or received a deferred order.

(g) If requested by staff, it shall be the responsibility of the individual seeking licensure to ensure that staff is provided with legible, certified copies of all court and law enforcement documentation from all jurisdictions where the individual has resided or practiced as a licensed health care professional. Failure to provide complete, legible and accurate documentation will result in delays prior to licensure or renewal of licensure and possible grounds for ineligibility.

(h) The fact that a person has been arrested will not be used as grounds for disciplinary action. If, however, evidence ascertained through the Board's own investigation from information contained in the arrest record regarding the underlying conduct suggests actions violating the Nursing Practice Act or rules of the Board, the board may consider such evidence as a factor in its deliberations regarding any decision to grant a license, restrict a license, or impose licensure discipline.

(i) Behavior that would otherwise bar or impede licensure may be deemed a "Youthful Indiscretion" as determined by an analysis of the behavior using the factors set out in §213.27 of this title (relating to Good Professional Character), subsections (a) - (f) of this section and at least the following criteria:

- (1) age of 22 years or less at the time of the behavior;
- (2) absence of criminal plan or premeditation;
- (3) presence of peer pressure or other contributing influences;
- (4) absence of adult supervision or guidance;
- (5) evidence of immature thought process/judgment at the time of the activity;
- (6) evidence of remorse;
- (7) evidence of restitution to both victim and community;
- (8) evidence of current maturity and personal accountability;
- (9) absence of subsequent undesirable conduct;
- (10) evidence of having learned from past mistakes;
- (11) evidence of current support structures that will prevent future criminal activity; and
- (12) evidence of current ability to practice nursing in accordance with the Nursing Practice Act, Board rules and generally accepted standards of nursing.

(j) With respect to a request to obtain a license from a person who has a criminal history, the executive director is authorized to close an eligibility file when the applicant has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days thereof.

(k) The board shall revoke a license or authorization to practice as an advanced practice nurse upon the imprisonment of the licensee following a felony conviction or deferred adjudication, or revocation of felony community supervision, parole, or mandatory supervision.

(l) The board shall revoke or deny a license or authorization to practice as an advanced practice nurse for the crimes listed in Texas Occupations Code §301.4535.

(m) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), and the Board in evaluating the impact of criminal conduct on nurse licensure in eligibility and disciplinary matters:

(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on May 17, 2013 in the *Texas Register* (38 TexReg 3152) and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html>.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §213.29

Introduction. The Texas Board of Nursing (Board) adopts amendments to §213.29, concerning Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters. Specifically, the adopted amendments

affect the Board's Disciplinary Guidelines for Criminal Conduct (Guidelines), which are incorporated by reference in adopted §213.29(j). The amendments to §213.29(j) were published in the May 17, 2013, issue of the *Texas Register* (38 TexReg 2953). The Guidelines were also published in the May 17, 2013, issue of the *Texas Register* (38 TexReg 3152). The amendments to §213.29(j) are adopted with changes, as set out herein. The Guidelines are adopted without changes and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535; and the Occupations Code Chapter 53, particularly §53.025(a), which requires licensing agencies to issue guidelines that state the reasons that a particular crime is considered to relate to the practice of the licensing agency and any other criterion that affects the decision of the licensing agency when considering the effects of the crime on an individual's licensure status.

The Board formally proposed amendments to §213.29(j) in the May 17, 2013, issue of the *Texas Register* (38 TexReg 2953). The Board has made minor changes to the proposed text as adopted in order to more specifically reference the particular issue of the *Texas Register* in which the Guidelines were published. As such, adopted §213.29(j) includes a reference to the publication date and page number of the specific issue of the *Texas Register* in which the Guidelines were published. None of these changes, however, materially alters issues raised in the proposal, introduces new subject matter, or affects persons other than those previously on notice. Further, no changes were made to the Guidelines, and the Guidelines are adopted as they appeared in the May 17, 2013, issue of the *Texas Register* (38 TexReg 3152).

Background

The Guidelines were originally approved by the Board and published in the *Texas Register* on March 9, 2007 (32 TexReg 1409). The Board received no public comments on the Guidelines, and, on July 2, 2008, adopted the Guidelines by reference in §213.29(j)(2) (33 TexReg 5007). The Guidelines have not undergone formal review and amendment since their original publication date in 2007. As a result, at its April 2012 meeting, the Board issued a charge to the Eligibility and Disciplinary Advisory Committee (Committee) to review and make recommendations regarding the Guidelines. In particular, the Board charged the Committee with considering: (i) whether portions of the Guidelines were outdated/obsolete; (ii) whether the Guidelines should establish a minimally acceptable sanction for each criminal offense; (iii) whether the recommended range of sanctions in the Guidelines were appropriate; and (iv) the type and/or amount of mitigating evidence necessary to support a more lenient sanction under the Guidelines.

The Committee met on November 30, 2012; February 8, 2013; and March 25, 2013 to review the Guidelines. Following a detailed review and discussion of the Guidelines, the Committee voted unanimously to recommend several changes to the Board. The Committee's recommended changes to the Guidelines, along with minor editorial/typographical changes identified by Board Staff, were presented to the Board at its April 2013 meeting. The Board voted to adopt the Guidelines, as amended, and propose amendments to §213.29(j) to incorporate the adopted changes into rule.

Many of the changes to the Guidelines are editorial and organizational in nature. However, some of the changes are more substantive. First, thirty-five new criminal offenses have been added to the Guidelines. These offenses include various felonies and misdemeanors, as well as crimes that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as affecting nursing licensure. The additional crimes include: continuous sexual abuse of young child or children (§301.4535(a)(5)); offenses for which registration as a sex offender is required under the Code of Criminal Procedure Chapter 62 (§301.4535(a)(16)); aggravated perjury (felony); bail jumping and failure to appear (felony/misdemeanor); bribery (felony); burglary of vehicles (felony/misdemeanor); credit card/debit card abuse (felony); criminal nonsupport (felony); driving while intoxicated with child passenger (felony); evading arrest or detention (felony/misdemeanor); failure to identify (misdemeanor); fraudulent destruction, removal, or concealment of writing (felony/misdemeanor); fraudulent use of possession of identifying information (felony); harboring runaway child (misdemeanor); hindering apprehension or prosecution (felony/misdemeanor); hindering secured creditors (felony/misdemeanor); interference with child custody (felony); intoxication assault (felony); intoxication manslaughter (felony); misapplication of fiduciary property or property of financial institution (felony/misdemeanor); obstruction or retaliation (felony); perjury (misdemeanor); prohibited substances and items in correctional facility (felony); prohibited weapon (felony/misdemeanor); public lewdness (misdemeanor); securing execution of document by deception (felony/misdemeanor); smuggling of persons (felony); tampering with or fabricating physical evidence (felony/misdemeanor); tampering with witness (felony); theft of service (felony/misdemeanor); trafficking of persons (felony); unlawful carrying weapon (felony/misdemeanor); unlawful possession of firearm (felony/misdemeanor); unlawful restraint (misdemeanor); and violation of civil rights of person in custody/improper sexual acts with a person in custody (felony/misdemeanor).

Pursuant to the Occupations Code Chapters 53 and 301 (Nursing Practice Act), criminal offenses may affect an individual's ability to obtain a nursing license (licensure eligibility) and a nurse's licensure status (licensure discipline). Board Staff routinely review individuals' criminal history to determine what effect, if any, a particular offense may have in eligibility and disciplinary cases. The thirty-five new offenses that were recommended by the Committee and approved by the Board are offenses that Board Staff have identified over the last few years during its review of eligibility and disciplinary files. These offenses have occurred frequently enough over the last few years to warrant inclusion in the Guidelines. Further, the Board has determined that these additional offenses are sufficiently related to the practice of nursing and are serious enough in nature to warrant investigation and, possibly, denial of licensure and/or licensure discipline.

In addition to including these additional crimes in the Guidelines, corresponding sanction recommendations and explanatory rationale has been included as well. For example, the felony offense of intoxication manslaughter has been added to the Guidelines. As stated in the Guideline's preamble, although the Guidelines provide a recommended range of sanctions for each offense, each case is considered on its own merits. As such, the appropriate sanction in any given case will be determined upon a consideration of the aggravating and/or mitigating factors present in that case. For the offense of felony intoxication

manslaughter, and depending upon the length of time that has transpired since the judicial order associated with the offense was issued, the recommended sanction range includes licensure denial or revocation, as well as options for licensure discipline. The remaining additional offenses that have been added to the Guidelines also include a corresponding recommended range of sanctions that will include an analysis of the mitigating and/or aggravating factors unique to each case.

The Guidelines also explain how each of the additional offenses are related to the practice of nursing. Using the previous example, criminal offenses involving alcohol and/or drugs, such as felony intoxication manslaughter, may indicate that an individual has a chemical dependency and/or substance abuse issue. Chemical dependency and/or substance abuse may affect an individual's professional judgment and ability to practice nursing with reasonable skill and safety. As such, the Board is concerned about such conduct, and an individual with this criminal history may be subject to a Board investigation to determine what effect, if any, the offense will have on the individual's licensure status. The remaining additional offenses that have been added to the Guidelines also include an explanation of how the offense relates to the practice of nursing.

Finally, the Guidelines indicate when a particular evaluation may be required and/or requested by the Board. Pursuant to the Occupations Code §301.4521, the Board is authorized to require certain physical and/or psychological evaluations of its applicants and licensees. In the present example regarding the felony offense of intoxication manslaughter, the Guidelines specify that a chemical dependency evaluation may be required to assist the Board in determining the effect of the individual's criminal history on his/her licensure status. Although §301.4521 authorizes the Board to require and/or request physical and psychological evaluations in situations where the Board has reason to believe that an individual may be unable to practice nursing with reasonable skill and safety, additional notations have been added throughout the Guidelines to indicate the types of evaluations that the Board may request/require in matters involving a particular criminal offense. Although this additional information does not limit the Board's ability to require/request additional types of evaluations in a particular case, it is intended to provide notice to individuals that an evaluation may be required and/or requested in order to assist the Board in determining whether the individual is fit to practice nursing safely and the potential effect the particular criminal offense may have on the individual's licensure status.

The Committee also felt it was important for the Board to reiterate the purpose of the Guidelines and to emphasize their limitations. To that end, pages 1 - 3 of the Guidelines have been amended to include additional information regarding the application of the Guidelines. The Guidelines are intended to inform applicants, licensees, and the general public of the potential effect a particular criminal offense may have on nurse licensure. As such, the Guidelines are based upon criminal offenses that have already been addressed and/or adjudicated by the penal system. The Board will not re-litigate the underlying facts of the criminal matter. Therefore, the amended language makes clear that the Board will consider the potential effect of a criminal offense upon an individual's licensure status as that offense has been previously determined by the penal system.

For certain offense, the Committee also recommended including additional information in the last column of the Guidelines to better explain the offense's connection to the practice of nursing. For example, for the offenses of "arson" and "cruelty to animals,"

information has been added to the last column of the Guidelines to emphasize that individuals who commit these types of criminal offenses have been linked with underlying psychopathology and/or may be more likely to engage in violent/harmful behaviors toward humans. This additional information clarifies why the Board may be concerned about an individual who has committed one of these offenses. "Aggravated perjury" and all of the prostitution offenses also include additional language better explaining their connection to the practice of nursing.

The Committee also reviewed the recommended range of sanction for each offense listed in the Guidelines. Although the Committee felt that the recommended ranges of sanctions were appropriate for the majority of the offenses, the Committee recommended that offenses primarily related to the use of drugs and/or alcohol be amended to include less severe sanctions if the individual demonstrates compliance with a treatment program and evidence of ongoing sobriety. Therefore, the Guidelines have been amended to include a broader range of recommended sanctions for these types of offenses. In particular, the amended range of sanctions for these types of offenses includes participation in a peer assistance program, as well as licensure suspension, which can either be enforced or probated, depending upon whether an individual is able to demonstrate treatment and twelve consecutive months of verifiable sobriety. These additional options are consistent with the Board's adopted Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or Other Substance Use Disorder, as well as the Board's rules regarding chemical dependency and substance abuse.

The Guidelines have also been amended to clarify the use of certain terminology within the Guidelines. In particular, the term "judicial order" has been amended to include orders of conviction, regardless of the plea entered, deferred adjudications, regardless of the plea entered, and deferred dispositions, including, but not limited to, pre-trial diversion agreements and deferred prosecutions. Further, the term "probation" has been amended to include community supervision, probation, parole, and any other requirement that results from, or is related to, a criminal disposition of any form, including deferred dispositions, such as pre-trial diversion agreements and deferred prosecutions. These amendments are intended to clarify the existing intent of the Guidelines and are consistent with the Board's authority to investigate and take licensure action based upon convictions and deferred dispositions, as set forth in the Nursing Practice Act, particularly §301.452(b)(3).

Finally, the Guidelines have been reorganized based upon recommendations by the Committee. Pages 4 - 14 of the Guidelines contain offenses that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as revocable offenses and/or potential bars to licensure. Pursuant to the terms of §301.4535, an individual who has committed one of the crimes enumerated in §301.4535 shall not be eligible to hold a nursing license until at least five years have passed from the date the individual successfully completes and is dismissed from community supervision or parole. The remaining pages of the Guidelines are arranged alphabetically, to include both felony and misdemeanor offenses. If an offense can be classified under the penal code as either a felony or misdemeanor, the Guidelines recognize this distinction and include a corresponding range of recommended sanctions for the felony offense and the misdemeanor offense. The Committee also recommended including the definition of each crime in the first column of the Guidelines instead of the last column of the Guidelines. As such,

the Guidelines have been amended to include a general definition, based upon the elements listed in the penal code, for each offense listed in the Guidelines. A legend has also been added to the second column of the Guidelines that will link a user to the penal code definitions and classifications of the terms "felonies" and "misdemeanors". Hyperlinks have also been added to the third column of the Guidelines that will link a user to the specific penal code provisions cited by the Guidelines for each criminal offense. These changes were recommended by the Committee and adopted by the Board in order to make the Guidelines more user friendly and easier to understand and navigate.

How the Sections Will Function. Adopted §213.29(j)(2) provides that the Guidelines, which were approved by the Board and published on May 17, 2013, in the *Texas Register* (38 TexReg 3152) and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html>, must be used by the Executive Director, the State Office of Administrative Hearings (SOAH), and the Board in evaluating the appropriate licensure determination or sanction in eligibility and disciplinary matters.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code Chapter 53 and §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535.

Section 53.021(a) provides that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (i) an offense that directly relates to the duties and responsibilities of the licensed occupation; (ii) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license; (iii) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or (iv) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Section 53.021(b) states that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Section 53.021(c) states that, except as provided by §53.021(d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of §53.021 if, regardless of the statutory authorization: (i) the person entered a plea of guilty or nolo contendere; (ii) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and (iii) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

Section 53.021(d) provides that a licensing authority may consider a person to have been convicted of an offense for purposes of §53.021 regardless of whether the proceedings were dismissed and the person was discharged as described by §53.021(c) if, after consideration of the factors described by §53.022 and §53.023(a), the licensing authority determines that: (i) the person may pose a continued threat to public safety; or (ii) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

Section 53.021(e) states that §53.021(c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide: (i) law enforcement or public health, education, or safety services; or (ii) financial services in an industry regulated by a person listed in §411.081(i)(19), Government Code.

Section 53.022 provides that, in determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider: (i) the nature and seriousness of the crime; (ii) the relationship of the crime to the purposes for requiring a license to engage in the occupation; (iii) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and (iv) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Section 53.023(a) states that, in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in §53.022: (i) the extent and nature of the person's past criminal activity; (ii) the age of the person when the crime was committed; (iii) the amount of time that has elapsed since the person's last criminal activity; (iv) the conduct and work activity of the person before and after the criminal activity; (v) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and (vi) other evidence of the person's fitness, including letters of recommendation from: (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; (B) the sheriff or chief of police in the community where the person resides; and (C) any other person in contact with the convicted person.

Section 53.023(b) states that the applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by §53.023(a)(6).

Section 53.023(c) states that in addition to fulfilling the requirements of §53.023(b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has: (i) maintained a record of steady employment; (ii) supported the applicant's dependents; (iii) maintained a record of good conduct; and (iv) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Section 53.025(a) states that each licensing authority shall issue guidelines relating to the practice of the licensing authority under Chapter 53. Further, the guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Section 53.025(b) states that a state licensing authority that issues guidelines under §53.025 shall file the guidelines with the secretary of state for publication in the *Texas Register*.

Section 53.025(c) states that a local or county licensing authority that issues guidelines under §53.025 shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having county-wide circulation in that county.

Section 53.025(d) provides that amendments to the guidelines, if any, shall be issued annually.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1545(a) provides that the Board shall adopt rules and guidelines necessary to comply with Chapter 53, except to the extent the requirements of Subtitle E are stricter than the requirements of Chapter 53.

Section 301.1545(b) states that, in its rules under §301.1545, the Board shall list the offenses for which a conviction would constitute grounds for the Board to take action under §53.021 or for which placement on deferred adjudication community supervision would constitute grounds for the Board to take action under Chapter 301.

Section 301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) provides that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.4521(a) defines the term "applicant" as a petitioner for a declaratory order of eligibility for a license or an applicant

for an initial license or renewal of a license and the term "evaluation" as a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.

Section 301.4521(b) provides that the Board may require a nurse or applicant to submit to an evaluation only if the Board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of: (i) physical impairment; (ii) mental impairment; or (iii) chemical dependency or abuse of drugs or alcohol.

Section 301.4521(c) provides that a demand for an evaluation under §301.4521(b) must be in writing and state: (i) the reasons probable cause exists to require the evaluation; and (ii) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

Section 301.4521(d) states that, if the nurse or applicant refuses to submit to the evaluation, the Board shall schedule a hearing on the issue of probable cause to be conducted by SOAH. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the Board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The Board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the Board's demand for an evaluation. The order may not be vacated or modified under the Government Code §2001.058.

Section 301.4521(e) states that, if a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under §301.4521(d), the Board may: (i) refuse to issue or renew a license; (ii) suspend a license; or (iii) issue an order limiting the license.

Section 301.4521(f) provides that the Board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the Board for a reason other than a reason listed in §301.4521(b). A request for an evaluation under §301.4521(f) must be in writing and state: (i) the reasons for the request; (ii) the type of evaluation requested; (iii) how the Board may use the evaluation; (iv) that the nurse or applicant may refuse to submit to an evaluation; and (v) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

Section 301.4521(g) states that, if a nurse or applicant refuses to consent to an evaluation under §301.4521(f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant: (i) not later than the 30th day before the date of the hearing, notifies the Board that an evaluation will be introduced into evidence at the hearing; (ii) provides the Board the results of that evaluation; (iii) informs the Board of any other evaluations by any other practitioners; and (iv) consents to an evaluation by a practitioner that meets Board standards established under §301.4521(h).

Section 301.4521(h) provides that the Board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under §301.4521. The Board shall maintain a list of qualified practitioners. The Board may solicit qualified practitioners located throughout the state to be on the list.

Section 301.4521(i) states that a nurse or applicant shall pay the costs of an evaluation conducted under §301.4521.

Section 301.4521(j) provides that the results of an evaluation under §301.4521 are: (i) confidential and not subject to disclosure under the Government Code Chapter 552; (ii) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be: (A) introduced as evidence in a proceeding before the Board or a hearing conducted by SOAH under Chapter 301; or (B) included in the findings of fact and conclusions of law in a final Board order.

Section 301.4521(k) provides that, if the Board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under §301.4521, the evaluation must be expunged from the Board's records.

Section 301.4521(l) requires the Board to adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under §301.4521.

Section 301.4521(m) states that the authority granted to the Board under §301.4521 is in addition to the Board's authority to make licensing decisions under Chapter 301.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic Board review; (v) suspension of the person's license for a period not to exceed five years; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

Section 301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is be-

ing disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors.

Section 301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

Section 301.4535(a) provides that the Board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of: (i) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code; (ii) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony; (iii) sexual assault under Section 22.011, Penal Code; (iv) aggravated sexual assault under Section 22.021, Penal Code; (v) continuous sexual abuse of young child or children under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code; (vi) aggravated assault under Section 22.02, Penal Code; (vii) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code; (viii) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code; (ix) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony; (x) an offense under Section 25.07, Penal Code, punished as a felony; (xi) an offense under Section 25.071, Penal Code, punished as a felony; (xii) an agreement to abduct a child from custody under Section 25.031, Penal Code; (xiii) the sale or purchase of a child under Section 25.08, Penal Code; (xiv) robbery under Section 29.02, Penal Code; (xv) aggravated robbery under Section 29.03, Penal Code; (xvi) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (xvii) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

Section 301.4535(a-1) states that an applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under §301.4535(a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the Board establishes by rule criteria that would permit the issuance or renewal of the license.

Section 301.4535(b) states that on final conviction or a plea of guilty or nolo contendere for an offense listed in §301.4535(a), the Board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

Section 301.4535(c) states that a person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by §301.4535(a).

§213.29. *Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters.*

(a) A person desiring to obtain or retain a license to practice professional or vocational nursing shall provide evidence of current sobriety and fitness consistent with this rule.

(b) Such person shall provide a sworn certificate to the Board stating that he/she has read and understands the requirements for licensure as a registered or vocational nurse and that he/she has not:

(1) within the past five years, become addicted to or treated for the use of alcohol or any other drug; or

(2) within the past five years, been diagnosed with, treated or hospitalized for schizophrenia and/or other psychotic disorders, bi-polar disorder, paranoid personality disorder, antisocial personality disorder or borderline personality disorder.

(c) If a registered or vocational nurse is reported to the Board for intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency; or if a person is unable to sign the certification in subsection (b) of this section, the following restrictions and requirements apply:

(1) Any matter before the Board that involves an allegation of chemical dependency, or misuse or abuse of drugs or alcohol, will require at a minimum that such person obtain for Board review an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions and/or Fines);

(2) Those persons who have become addicted to or treated for alcohol or chemical dependency will not be eligible to obtain or retain a license to practice as a nurse unless such person can demonstrate sobriety and abstinence for the preceding twelve consecutive months through verifiable and reliable evidence, or can establish eligibility to participate in a peer assistance program created pursuant to Chapter 467 of the Health and Safety Code;

(3) Those persons who have become addicted to or treated for alcohol or chemical dependency will not be eligible to obtain or retain an unencumbered license to practice nursing until the individual has attained a five-year term of sobriety and abstinence or until such person has successfully completed participation in a board-approved peer assistance program created pursuant to Chapter 467 of the Health and Safety Code.

(4) Those persons who have been diagnosed with, treated, or hospitalized for the disorders mentioned in subsection (b) of this section shall execute an authorization for release of medical, psychiatric, and treatment records.

(d) It shall be the responsibility of those persons subject to this rule to submit to and pay for an evaluation that meets the criteria of §213.33 of this chapter.

(e) Prior intemperate use, mental illness, or diminished mental capacity is relevant only so far as it may indicate current intemperate use or lack of fitness.

(f) With respect to chemical dependency in eligibility and disciplinary matters, the executive director is authorized to:

(1) review submissions from a movant, materials and information gathered or prepared by staff, and identify any deficiencies in file information necessary to determine the movant's request;

(2) close any eligibility file in which the movant has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days thereof;

(3) approve eligibility, enter eligibility orders and approve renewals, without Board ratification, when the evidence is clearly insufficient to prove a ground for denial of licensure; and

(4) propose conditional orders in eligibility, disciplinary and renewal matters for individuals who have experienced chemical/alcohol dependency within the past five years provided:

(A) the individual presents reliable and verifiable evidence of having functioned in a sober/abstinent manner for the previous twelve consecutive months; and

(B) licensure limitations/stipulations and/or peer assistance program participation can be implemented which will ensure that patients and the public are protected until the individual has attained a five-year term of sobriety/abstinence.

(g) With respect to mental illness or diminished mental capacity in eligibility, disciplinary, and renewal matters, the executive director is authorized to propose conditional orders for individuals who have experienced mental illness or diminished mental capacity within the past five years provided:

(1) the individual presents reliable and verifiable evidence of having functioned in a manner consistent with the behaviors required of nurses under the Nursing Practice Act and Board rules for at least the previous twelve consecutive months; and

(2) licensure limitations/stipulations and/or peer assistance program participation can be implemented which will ensure that patients and the public are protected until the individual has attained a five-year term of controlled behavior and consistent compliance with the requirements of the Nursing Practice Act and Board rules.

(h) In renewal matters involving chemical dependency use, mental illness, or diminished mental capacity, the executive director shall consider the following information from the preceding renewal period:

(1) evidence of the licensee's safe practice;

(2) compliance with the NPA and Board rules; and

(3) written verification of compliance with any treatment.

(i) Upon receipt of items (h)(1) - (3) of this section, the executive director may renew the license.

(j) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), and the Board in evaluating the appropriate licensure determination or sanction in eligibility and disciplinary matters:

(1) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's web site at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on May 17, 2013 in the *Texas Register* (38 TexReg 3152) and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html>.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §213.30

Introduction. The Texas Board of Nursing (Board) adopts amendments to §213.30, concerning Declaratory Order of Eligibility for Licensure. Specifically, the adopted amendments affect the Board's Disciplinary Guidelines for Criminal Conduct (Guidelines), which are incorporated by reference in adopted §213.30(j). The amendments to §213.30(j) were published in the May 17, 2013, issue of the *Texas Register* (38 TexReg 2959). The Guidelines were also published in the May 17, 2013, issue of the *Texas Register* (38 TexReg 3152). The amendments to §213.30(j) are adopted with changes, as set out herein. The Guidelines are adopted without changes and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535; and the Occupations Code Chapter 53, particularly §53.025(a), which requires licensing agencies to issue guidelines that state the reasons that a particular crime is considered to relate to the practice of the licensing agency and any other criterion that affects the decision of the licensing agency when considering the effects of the crime on an individual's licensure status.

The Board formally proposed amendments to §213.30(j) in the May 17, 2013, issue of the *Texas Register* (38 TexReg 2959). The Board has made minor changes to the proposed text as adopted in order to more specifically reference the particular issue of the *Texas Register* in which the Guidelines were published. As such, adopted §213.30(j) includes a reference to the publication date and page number of the specific issue of the *Texas Register* in which the Guidelines were published. None of these changes, however, materially alters issues raised in the proposal, introduces new subject matter, or affects persons other than those previously on notice. Further, no changes were made to the Guidelines, and the Guidelines are adopted as they appeared in the May 17, 2013, issue of the *Texas Register* (38 TexReg 3152).

Background

The Guidelines were originally approved by the Board and published in the *Texas Register* on March 9, 2007 (32 TexReg 1409). The Board received no public comments on the Guidelines, and, on July 2, 2008, adopted the Guidelines by reference in §213.30(j)(5) (33 TexReg 5007). The Guidelines have not undergone formal review and amendment since their original publication date in 2007. As a result, at its April 2012 meeting, the Board issued a charge to the Eligibility and Disciplinary Advisory Committee (Committee) to review and make recommendations regarding the Guidelines. In particular, the Board charged the Committee with considering: (i) whether portions of the Guidelines were outdated/obsolete; (ii) whether the Guidelines should establish a minimally acceptable sanction for each criminal offense; (iii) whether the recommended range of sanctions in the Guidelines were appropriate; and (iv) the type

and/or amount of mitigating evidence necessary to support a more lenient sanction under the Guidelines.

The Committee met on November 30, 2012; February 8, 2013; and March 25, 2013 to review the Guidelines. Following a detailed review and discussion of the Guidelines, the Committee voted unanimously to recommend several changes to the Board. The Committee's recommended changes to the Guidelines, along with minor editorial/typographical changes identified by Board Staff, were presented to the Board at its April 2013 meeting. The Board voted to adopt the Guidelines, as amended, and propose amendments to §213.30(j) to incorporate the adopted changes into rule.

Many of the changes to the Guidelines are editorial and organizational in nature. However, some of the changes are more substantive. First, thirty-five new criminal offenses have been added to the Guidelines. These offenses include various felonies and misdemeanors, as well as crimes that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as affecting nursing licensure. The additional crimes include: continuous sexual abuse of young child or children (§301.4535(a)(5)); offenses for which registration as a sex offender is required under the Code of Criminal Procedure Chapter 62 (§301.4535(a)(16)); aggravated perjury (felony); bail jumping and failure to appear (felony/misdemeanor); bribery (felony); burglary of vehicles (felony/misdemeanor); credit card/debit card abuse (felony); criminal nonsupport (felony); driving while intoxicated with child passenger (felony); evading arrest or detention (felony/misdemeanor); failure to identify (misdemeanor); fraudulent destruction, removal, or concealment of writing (felony/misdemeanor); fraudulent use of possession of identifying information (felony); harboring runaway child (misdemeanor); hindering apprehension or prosecution (felony/misdemeanor); hindering secured creditors (felony/misdemeanor); interference with child custody (felony); intoxication assault (felony); intoxication manslaughter (felony); misapplication of fiduciary property or property of financial institution (felony/misdemeanor); obstruction or retaliation (felony); perjury (misdemeanor); prohibited substances and items in correctional facility (felony); prohibited weapon (felony/misdemeanor); public lewdness (misdemeanor); securing execution of document by deception (felony/misdemeanor); smuggling of persons (felony); tampering with or fabricating physical evidence (felony/misdemeanor); tampering with witness (felony); theft of service (felony/misdemeanor); trafficking of persons (felony); unlawful carrying weapon (felony/misdemeanor); unlawful possession of firearm (felony/misdemeanor); unlawful restraint (misdemeanor); and violation of civil rights of person in custody/improper sexual acts with a person in custody (felony/misdemeanor).

Pursuant to the Occupations Code Chapters 53 and 301 (Nursing Practice Act), criminal offenses may affect an individual's ability to obtain a nursing license (licensure eligibility) and a nurse's licensure status (licensure discipline). Board Staff routinely review individuals' criminal history to determine what effect, if any, a particular offense may have in eligibility and disciplinary cases. The thirty-five new offenses that were recommended by the Committee and approved by the Board are offenses that Board Staff have identified over the last few years during its review of eligibility and disciplinary files. These offenses have occurred frequently enough over the last few years to warrant inclusion in the Guidelines. Further, the Board has determined that these additional offenses are sufficiently related to the practice of nursing and are serious enough in

nature to warrant investigation and, possibly, denial of licensure and/or licensure discipline.

In addition to including these additional crimes in the Guidelines, corresponding sanction recommendations and explanatory rationale has been included as well. For example, the felony offense of intoxication manslaughter has been added to the Guidelines. As stated in the Guideline's preamble, although the Guidelines provide a recommended range of sanctions for each offense, each case is considered on its own merits. As such, the appropriate sanction in any given case will be determined upon a consideration of the aggravating and/or mitigating factors present in that case. For the offense of felony intoxication manslaughter, and depending upon the length of time that has transpired since the judicial order associated with the offense was issued, the recommended sanction range includes licensure denial or revocation, as well as options for licensure discipline. The remaining additional offenses that have been added to the Guidelines also include a corresponding recommended range of sanctions that will include an analysis of the mitigating and/or aggravating factors unique to each case.

The Guidelines also explain how each of the additional offenses are related to the practice of nursing. Using the previous example, criminal offenses involving alcohol and/or drugs, such as felony intoxication manslaughter, may indicate that an individual has a chemical dependency and/or substance abuse issue. Chemical dependency and/or substance abuse may affect an individual's professional judgment and ability to practice nursing with reasonable skill and safety. As such, the Board is concerned about such conduct, and an individual with this criminal history may be subject to a Board investigation to determine what effect, if any, the offense will have on the individual's licensure status. The remaining additional offenses that have been added to the Guidelines also include an explanation of how the offense relates to the practice of nursing.

Finally, the Guidelines indicate when a particular evaluation may be required and/or requested by the Board. Pursuant to the Occupations Code §301.4521, the Board is authorized to require certain physical and/or psychological evaluations of its applicants and licensees. In the present example regarding the felony offense of intoxication manslaughter, the Guidelines specify that a chemical dependency evaluation may be required to assist the Board in determining the effect of the individual's criminal history on his/her licensure status. Although §301.4521 authorizes the Board to require and/or request physical and psychological evaluations in situations where the Board has reason to believe that an individual may be unable to practice nursing with reasonable skill and safety, additional notations have been added throughout the Guidelines to indicate the types of evaluations that the Board may request/require in matters involving a particular criminal offense. Although this additional information does not limit the Board's ability to require/request additional types of evaluations in a particular case, it is intended to provide notice to individuals that an evaluation may be required and/or requested in order to assist the Board in determining whether the individual is fit to practice nursing safely and the potential effect the particular criminal offense may have on the individual's licensure status.

The Committee also felt it was important for the Board to reiterate the purpose of the Guidelines and to emphasize their limitations. To that end, pages 1 - 3 of the Guidelines have been amended to include additional information regarding the application of the Guidelines. The Guidelines are intended to inform applicants, licensees, and the general public of the potential effect a par-

ticular criminal offense may have on nurse licensure. As such, the Guidelines are based upon criminal offenses that have already been addressed and/or adjudicated by the penal system. The Board will not re-litigate the underlying facts of the criminal matter. Therefore, the amended language makes clear that the Board will consider the potential effect of a criminal offense upon an individual's licensure status as that offense has been previously determined by the penal system.

For certain offense, the Committee also recommended including additional information in the last column of the Guidelines to better explain the offense's connection to the practice of nursing. For example, for the offenses of "arson" and "cruelty to animals," information has been added to the last column of the Guidelines to emphasize that individuals who commit these types of criminal offenses have been linked with underlying psychopathology and/or may be more likely to engage in violent/harmful behaviors toward humans. This additional information clarifies why the Board may be concerned about an individual who has committed one of these offenses. "Aggravated perjury" and all of the prostitution offenses also include additional language better explaining their connection to the practice of nursing.

The Committee also reviewed the recommended range of sanction for each offense listed in the Guidelines. Although the Committee felt that the recommended ranges of sanctions were appropriate for the majority of the offenses, the Committee recommended that offenses primarily related to the use of drugs and/or alcohol be amended to include less severe sanctions if the individual demonstrates compliance with a treatment program and evidence of ongoing sobriety. Therefore, the Guidelines have been amended to include a broader range of recommended sanctions for these types of offenses. In particular, the amended range of sanctions for these types of offenses includes participation in a peer assistance program, as well as licensure suspension, which can either be enforced or probated, depending upon whether an individual is able to demonstrate treatment and twelve consecutive months of verifiable sobriety. These additional options are consistent with the Board's adopted Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or Other Substance Use Disorder, as well as the Board's rules regarding chemical dependency and substance abuse.

The Guidelines have also been amended to clarify the use of certain terminology within the Guidelines. In particular, the term "judicial order" has been amended to include orders of conviction, regardless of the plea entered, deferred adjudications, regardless of the plea entered, and deferred dispositions, including, but not limited to, pre-trial diversion agreements and deferred prosecutions. Further, the term "probation" has been amended to include community supervision, probation, parole, and any other requirement that results from, or is related to, a criminal disposition of any form, including deferred dispositions, such as pre-trial diversion agreements and deferred prosecutions. These amendments are intended to clarify the existing intent of the Guidelines and are consistent with the Board's authority to investigate and take licensure action based upon convictions and deferred dispositions, as set forth in the Nursing Practice Act, particularly §301.452(b)(3).

Finally, the Guidelines have been reorganized based upon recommendations by the Committee. Pages 4 - 14 of the Guidelines contain offenses that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as revocable offenses and/or potential bars to licensure. Pursuant

to the terms of §301.4535, an individual who has committed one of the crimes enumerated in §301.4535 shall not be eligible to hold a nursing license until at least five years have passed from the date the individual successfully completes and is dismissed from community supervision or parole. The remaining pages of the Guidelines are arranged alphabetically, to include both felony and misdemeanor offenses. If an offense can be classified under the penal code as either a felony or misdemeanor, the Guidelines recognize this distinction and include a corresponding range of recommended sanctions for the felony offense and the misdemeanor offense. The Committee also recommended including the definition of each crime in the first column of the Guidelines instead of the last column of the Guidelines. As such, the Guidelines have been amended to include a general definition, based upon the elements listed in the penal code, for each offense listed in the Guidelines. A legend has also been added to the second column of the Guidelines that will link a user to the penal code definitions and classifications of the terms "felonies" and "misdemeanors". Hyperlinks have also been added to the third column of the Guidelines that will link a user to the specific penal code provisions cited by the Guidelines for each criminal offense. These changes were recommended by the Committee and adopted by the Board in order to make the Guidelines more user friendly and easier to understand and navigate.

How the Sections Will Function. Adopted §213.30(j)(5) provides that the Guidelines, which were approved by the Board and published on May 17, 2013, in the *Texas Register* (38 TexReg 3152) and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html>, must be used by the Executive Director and SOAH when recommending a declaratory order of eligibility, and the Board in determining the appropriate declaratory order in eligibility matters.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority.

The amendments are adopted under the Occupations Code Chapter 53 and §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535.

Section 53.021(a) provides that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (i) an offense that directly relates to the duties and responsibilities of the licensed occupation; (ii) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license; (iii) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or (iv) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Section 53.021(b) states that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Section 53.021(c) states that, except as provided by §53.021(d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of §53.021 if, regardless of the statutory authorization: (i) the person entered a plea of guilty or nolo contendere; (ii) the judge deferred further proceedings without entering an adjudi-

cation of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and (iii) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

Section 53.021(d) provides that a licensing authority may consider a person to have been convicted of an offense for purposes of §53.021 regardless of whether the proceedings were dismissed and the person was discharged as described by §53.021(c) if, after consideration of the factors described by §53.022 and §53.023(a), the licensing authority determines that: (i) the person may pose a continued threat to public safety; or (ii) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

Section 53.021(e) states that §53.021(c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide: (i) law enforcement or public health, education, or safety services; or (ii) financial services in an industry regulated by a person listed in §411.081(i)(19), Government Code.

Section 53.022 provides that, in determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider: (i) the nature and seriousness of the crime; (ii) the relationship of the crime to the purposes for requiring a license to engage in the occupation; (iii) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and (iv) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Section 53.023(a) states that, in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in §53.022: (i) the extent and nature of the person's past criminal activity; (ii) the age of the person when the crime was committed; (iii) the amount of time that has elapsed since the person's last criminal activity; (iv) the conduct and work activity of the person before and after the criminal activity; (v) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and (vi) other evidence of the person's fitness, including letters of recommendation from: (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; (B) the sheriff or chief of police in the community where the person resides; and (C) any other person in contact with the convicted person.

Section 53.023(b) states that the applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by §53.023(a)(6).

Section 53.023(c) states that in addition to fulfilling the requirements of §53.023(b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has: (i) maintained a record of steady employment; (ii) supported the applicant's dependents; (iii) maintained a record of good conduct; and (iv) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Section 53.025(a) states that each licensing authority shall issue guidelines relating to the practice of the licensing authority under Chapter 53. Further, the guidelines must state the reasons

a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Section 53.025(b) states that a state licensing authority that issues guidelines under §53.025 shall file the guidelines with the secretary of state for publication in the *Texas Register*.

Section 53.025(c) states that a local or county licensing authority that issues guidelines under §53.025 shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having county-wide circulation in that county.

Section 53.025(d) provides that amendments to the guidelines, if any, shall be issued annually.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1545(a) provides that the Board shall adopt rules and guidelines necessary to comply with Chapter 53, except to the extent the requirements of Subtitle E are stricter than the requirements of Chapter 53.

Section 301.1545(b) states that, in its rules under §301.1545, the Board shall list the offenses for which a conviction would constitute grounds for the Board to take action under §53.021 or for which placement on deferred adjudication community supervision would constitute grounds for the Board to take action under Chapter 301.

Section 301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform

to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) provides that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.4521(a) defines the term "applicant" as a petitioner for a declaratory order of eligibility for a license or an applicant for an initial license or renewal of a license and the term "evaluation" as a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.

Section 301.4521(b) provides that the Board may require a nurse or applicant to submit to an evaluation only if the Board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of: (i) physical impairment; (ii) mental impairment; or (iii) chemical dependency or abuse of drugs or alcohol.

Section 301.4521(c) provides that a demand for an evaluation under §301.4521(b) must be in writing and state: (i) the reasons probable cause exists to require the evaluation; and (ii) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

Section 301.4521(d) states that, if the nurse or applicant refuses to submit to the evaluation, the Board shall schedule a hearing on the issue of probable cause to be conducted by SOAH. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the Board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The Board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the Board's demand for an evaluation. The order may not be vacated or modified under the Government Code §2001.058.

Section 301.4521(e) states that, if a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under §301.4521(d), the Board may: (i) refuse to issue or renew a license; (ii) suspend a license; or (iii) issue an order limiting the license.

Section 301.4521(f) provides that the Board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the Board for a reason other than a reason listed in §301.4521(b). A request for an evaluation under §301.4521(f) must be in writing and state: (i) the reasons for the request; (ii) the type of evaluation requested; (iii) how the Board may use the evaluation; (iv) that the nurse or applicant may refuse to submit to an evaluation; and (v) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

Section 301.4521(g) states that, if a nurse or applicant refuses to consent to an evaluation under §301.4521(f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant: (i) not later than the 30th day before the date of the hearing, notifies the Board that an evaluation will be introduced into evidence at the hearing; (ii) provides the Board the results of that evaluation; (iii) informs the Board of any other evaluations by any other practitioners; and (iv) consents to an evaluation by a practitioner that meets Board standards established under §301.4521(h).

Section 301.4521(h) provides that the Board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under §301.4521. The Board shall maintain a list of qualified practitioners. The Board may solicit qualified practitioners located throughout the state to be on the list.

Section 301.4521(i) states that a nurse or applicant shall pay the costs of an evaluation conducted under §301.4521.

Section 301.4521(j) provides that the results of an evaluation under §301.4521 are: (i) confidential and not subject to disclosure under the Government Code Chapter 552; (ii) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be: (A) introduced as evidence in a proceeding before the Board or a hearing conducted by SOAH under Chapter 301; or (B) included in the findings of fact and conclusions of law in a final Board order.

Section 301.4521(k) provides that, if the Board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under §301.4521, the evaluation must be expunged from the Board's records.

Section 301.4521(l) requires the Board to adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under §301.4521.

Section 301.4521(m) states that the authority granted to the Board under §301.4521 is in addition to the Board's authority to make licensing decisions under Chapter 301.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic Board review; (v) suspension of the person's license for a period not to exceed five years; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered

license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

Section 301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors.

Section 301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

Section 301.4535(a) provides that the Board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of: (i) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code; (ii) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony; (iii) sexual assault under Section 22.011, Penal Code; (iv) aggravated sexual assault under Section 22.021, Penal Code; (v) continuous sexual abuse of young child or children under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code; (vi) aggravated assault under Section 22.02, Penal Code; (vii) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code; (viii) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code; (ix) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony; (x) an offense under Section 25.07, Penal Code, punished as a felony; (xi) an offense under Section 25.071, Penal Code, punished as a felony; (xii) an agreement to abduct a child from custody under Section 25.031, Penal Code; (xiii) the sale or purchase of a child under Section 25.08, Penal Code; (xiv) robbery under Section 29.02, Penal Code; (xv) aggravated robbery under Section 29.03, Penal Code; (xvi) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (xvii) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

Section 301.4535(a-1) states that an applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under §301.4535(a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the Board establishes by rule criteria that would permit the issuance or renewal of the license.

Section 301.4535(b) states that on final conviction or a plea of guilty or nolo contendere for an offense listed in §301.4535(a), the Board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

Section 301.4535(c) states that a person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by §301.4535(a).

§213.30. *Declaratory Order of Eligibility for Licensure.*

(a) For purposes of this section only, "petitioner" means an individual who:

(1) is enrolled or planning to enroll in an educational nursing program that prepares individuals for initial licensure as a registered or vocational nurse;

(2) seeks licensure by endorsement pursuant to §217.5 of this title (relating to Temporary License and Endorsement); or

(3) seeks licensure by examination pursuant to §217.2 (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions) or §217.4 (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate From Nursing Education Programs Outside of United States' Jurisdiction) of this title.

(b) An individual who has reason to believe that he or she may be ineligible for initial licensure or licensure by endorsement may petition the Board for a declaratory order as to his or her eligibility.

(c) A petitioner must submit a petition on forms provided by the Board, which includes:

(1) a statement by the petitioner indicating the reason(s) and basis of potential ineligibility;

(2) if the potential ineligibility is due to criminal conduct and/or conviction, any court documents including, but not limited to: indictments, orders of deferred adjudication, judgments, probation records, and evidence of completion of probation, if applicable;

(3) if the potential ineligibility is due to mental illness, evidence of an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions) and evidence of treatment;

(4) if the potential ineligibility is due to chemical dependency, including alcohol, evidence of an evaluation that meets the criteria of §213.33 of this chapter and treatment, after care, and support group attendance; and

(5) the required fee, which is not refundable.

(d) Once the Board has received all necessary information, including the information required by subsection (c) of this section, an investigation of the petition and the petitioner's eligibility shall be conducted.

(e) The petitioner or the Board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.

(f) If an individual seeking licensure by endorsement pursuant to §217.5 of this title has been licensed to practice professional or vocational nursing in any jurisdiction and has been disciplined in that jurisdiction or allowed to surrender in lieu of discipline in that jurisdiction, the following provisions shall govern the eligibility of the petitioner with regard to §213.27 of this title (relating to Good Professional Character).

(1) A certified copy of the order or judgment of discipline from the jurisdiction is prima facie evidence of the matters contained in such order or judgment, and a final adjudication in the jurisdiction that the individual has committed professional misconduct is conclusive of the professional misconduct alleged in such order or judgment.

(2) An individual who is disciplined for professional misconduct in the course of nursing in any jurisdiction or who resigned in lieu of disciplinary action is deemed to not have present good professional character under §213.27 of this title, and is therefore ineligible to seek licensure by endorsement under §217.5 of this title during the period of discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the individual has filed a petition for reinstatement in the disciplining jurisdiction and obtained a final determination on that petition.

(g) If a petitioner's potential ineligibility is due to criminal conduct and/or conviction, including deferred adjudication, the following provisions shall govern the eligibility of the petitioner with regard to §213.28 of this title (relating to Licensure of Persons with Criminal Convictions).

(1) The record of conviction, guilty plea, or order of deferred adjudication is conclusive evidence of guilt.

(2) Upon proof that a felony conviction or felony order of probation, with or without adjudication of guilt, has been set aside or reversed, the petitioner shall be entitled to a new hearing before the Board for the purpose of determining whether, absent the record of conclusive evidence of guilt, the petitioner possesses present good professional character and fitness.

(h) If the Executive Director proposes to find the petitioner ineligible for licensure, the petitioner may obtain a hearing before the State Office of Administrative Hearings (SOAH). The Executive Director shall have discretion to set a hearing and give notice of the hearing to the petitioner. The hearing shall be conducted in accordance with §213.22 of this chapter (relating to Formal Proceedings) and the rules of SOAH. When in conflict, SOAH's rules of procedure will prevail. The decision of the Board shall be rendered in accordance with §213.23 of this chapter (relating to Decision of the Board).

(i) A final Board order is issued after an appeal results in a Proposal for Decision from SOAH. The Board's final order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling determines the petitioner's eligibility with respect to the grounds for potential ineligibility as set out in the order. An individual whose petition is denied by final order of the Board may not file another petition or seek licensure by endorsement or examination until after the expiration of three years from the date of the Board's order denying the petition. If the petitioner does not appeal or request a formal hearing at SOAH after a letter proposal to deny eligibility made by the Eligibility and Disciplinary Committee of the Board or the Executive Director, the petitioner may re-petition or seek licensure by endorsement or examination after the expiration of one year from the date of the proposal to deny eligibility, in accordance with this section and the Occupations Code §301.257.

(j) The Disciplinary Matrix and factors set forth in §213.33(b) and (c) of this chapter and the following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director and SOAH when recommending a declaratory order of eligibility, and the Board in determining the appropriate declaratory order in eligibility matters:

(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on May 17, 2013 in the *Texas Register* (38 TexReg 3152) and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html>.

(k) If an individual seeking licensure by endorsement under §217.5 of this title or licensure by examination under §217.2 or §217.4 of this title should have had an eligibility issue settled pursuant to the Occupations Code §301.257, the filed application will be treated and processed as a petition for declaratory order under this section, and the individual will be treated as a petitioner under this section and will be required to pay the non-refundable fee required by this section.

(l) This section implements the requirements of the Occupations Code Chapter 53 Subchapter D and the Occupations Code §301.257.

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 June 20, 2013.

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Texas Board of Nursing

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For further information, please call: (512) 305-6822



22 TAC §213.33

Introduction. The Texas Board of Nursing (Board) adopts amendments to §213.33, concerning Factors Considered for Imposition of Penalties/Sanctions. Specifically, the adopted amendments affect the Board's Disciplinary Guidelines for Criminal Conduct (Guidelines), which are incorporated by reference in adopted §213.33(b) and (g). The amendments to §213.33(g)

were published in the May 17, 2013, issue of the *Texas Register* (38 TexReg 2965). The amendments to the Board's Disciplinary Matrix, which is incorporated in §213.33(b), were published in the May 17, 2013, issue of the *Texas Register* (38 TexReg 3074). The Guidelines were also published in the May 17, 2013, issue of the *Texas Register* (38 TexReg 3152). The amendments to §213.33(g) are adopted with changes, as set out herein. The amendments to the Board's Disciplinary Matrix, which are incorporated in §213.33(b), are adopted without changes from the proposal. The Guidelines are also adopted without changes and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, 301.4535, and the Occupations Code Chapter 53, particularly §53.025(a), which requires licensing agencies to issue guidelines that state the reasons that a particular crime is considered to relate to the practice of the licensing agency and any other criterion that affects the decision of the licensing agency when considering the effects of the crime on an individual's licensure status.

The Board formally proposed amendments to §213.33(g) in the May 17, 2013, issue of the *Texas Register* (38 TexReg 2965). The Board has made minor changes to the proposed text as adopted in order to more specifically reference the particular issue of the *Texas Register* in which the Guidelines were published. As such, adopted §213.33(g) includes a reference to the publication date and page number of the specific issue of the *Texas Register* in which the Guidelines were published. None of these changes, however, materially alters issues raised in the proposal, introduces new subject matter, or affects persons other than those previously on notice. No changes are made to the Board's Disciplinary Matrix, which is incorporated in §213.33(b), and the Matrix is adopted as it appeared in the May 17, 2013, issue of the *Texas Register* (38 TexReg 3074). Further, no changes are made to the Guidelines, and the Guidelines are adopted as they appeared in the May 17, 2013, issue of the *Texas Register* (38 TexReg 3152).

Background

The Guidelines were originally approved by the Board and published in the *Texas Register* on March 9, 2007 (32 TexReg 1409). The Board received no public comments on the Guidelines, and, on July 2, 2008, adopted the Guidelines by reference in §213.33(g)(5) (33 TexReg 5007). The Guidelines were later incorporated by reference in §213.33(b) (35 TexReg 1208) in 2010. The Guidelines have not undergone formal review and amendment since their original publication date in 2007. As a result, at its April, 2012, meeting, the Board issued a charge to the Eligibility and Disciplinary Advisory Committee (Committee) to review and make recommendations regarding the Guidelines. In particular, the Board charged the Committee with considering: (i) whether portions of the Guidelines were outdated/obsolete; (ii) whether the Guidelines should establish a minimally acceptable sanction for each criminal offense; (iii) whether the recommended range of sanctions in the Guidelines were appropriate; and (iv) the type and/or amount of mitigating evidence necessary to support a more lenient sanction under the Guidelines.

The Committee met on November 30, 2012; February 8, 2013; and March 25, 2013 to review the Guidelines. Following a detailed review and discussion of the Guidelines, the Committee voted unanimously to recommend several changes to the Board. The Committee's recommended changes to the

Guidelines, along with minor editorial/typographical changes identified by Board Staff, were presented to the Board at its April, 2013, meeting. The Board voted to adopt the Guidelines, as amended, and propose amendments to §213.33(b) and (g) to incorporate the adopted changes into rule.

Many of the changes to the Guidelines are editorial and organizational in nature. However, some of the changes are more substantive. First, thirty-five new criminal offenses have been added to the Guidelines. These offenses include various felonies and misdemeanors, as well as crimes that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as affecting nursing licensure. The additional crimes include: continuous sexual abuse of young child or children (§301.4535(a)(5)); offenses for which registration as a sex offender is required under the Code of Criminal Procedure Chapter 62 (§301.4535(a)(16)); aggravated perjury (felony); bail jumping and failure to appear (felony/misdemeanor); bribery (felony); burglary of vehicles (felony/misdemeanor); credit card/debit card abuse (felony); criminal nonsupport (felony); driving while intoxicated with child passenger (felony); evading arrest or detention (felony/misdemeanor); failure to identify (misdemeanor); fraudulent destruction, removal, or concealment of writing (felony/misdemeanor); fraudulent use of possession of identifying information (felony); harboring runaway child (misdemeanor); hindering apprehension or prosecution (felony/misdemeanor); hindering secured creditors (felony/misdemeanor); interference with child custody (felony); intoxication assault (felony); intoxication manslaughter (felony); misapplication of fiduciary property or property of financial institution (felony/misdemeanor); obstruction or retaliation (felony); perjury (misdemeanor); prohibited substances and items in correctional facility (felony); prohibited weapon (felony/misdemeanor); public lewdness (misdemeanor); securing execution of document by deception (felony/misdemeanor); smuggling of persons (felony); tampering with or fabricating physical evidence (felony/misdemeanor); tampering with witness (felony); theft of service (felony/misdemeanor); trafficking of persons (felony); unlawful carrying weapon (felony/misdemeanor); unlawful possession of firearm (felony/misdemeanor); unlawful restraint (misdemeanor); and violation of civil rights of person in custody/improper sexual acts with a person in custody (felony/misdemeanor).

Pursuant to the Occupations Code Chapters 53 and 301 (Nursing Practice Act), criminal offenses may affect an individual's ability to obtain a nursing license (licensure eligibility) and a nurse's licensure status (licensure discipline). Board Staff routinely review individuals' criminal history to determine what effect, if any, a particular offense may have in eligibility and disciplinary cases. The thirty-five new offenses that were recommended by the Committee and approved by the Board are offenses that Board Staff have identified over the last few years during its review of eligibility and disciplinary files. These offenses have occurred frequently enough over the last few years to warrant inclusion in the Guidelines. Further, the Board has determined that these additional offenses are sufficiently related to the practice of nursing and are serious enough in nature to warrant investigation and, possibly, denial of licensure and/or licensure discipline.

In addition to including these additional crimes in the Guidelines, corresponding sanction recommendations and explanatory rationale has been included as well. For example, the felony offense of intoxication manslaughter has been added to the Guidelines. As stated in the Guideline's preamble, although the Guide-

lines provide a recommended range of sanctions for each offense, each case is considered on its own merits. As such, the appropriate sanction in any given case will be determined upon a consideration of the aggravating and/or mitigating factors present in that case. For the offense of felony intoxication manslaughter, and depending upon the length of time that has transpired since the judicial order associated with the offense was issued, the recommended sanction range includes licensure denial or revocation, as well as options for licensure discipline. The remaining additional offenses that have been added to the Guidelines also include a corresponding recommended range of sanctions that will include an analysis of the mitigating and/or aggravating factors unique to each case.

The Guidelines also explain how each of the additional offenses are related to the practice of nursing. Using the previous example, criminal offenses involving alcohol and/or drugs, such as felony intoxication manslaughter, may indicate that an individual has a chemical dependency and/or substance abuse issue. Chemical dependency and/or substance abuse may affect an individual's professional judgment and ability to practice nursing with reasonable skill and safety. As such, the Board is concerned about such conduct, and an individual with this criminal history may be subject to a Board investigation to determine what effect, if any, the offense will have on the individual's licensure status. The remaining additional offenses that have been added to the Guidelines also include an explanation of how the offense relates to the practice of nursing.

Finally, the Guidelines indicate when a particular evaluation may be required and/or requested by the Board. Pursuant to the Occupations Code §301.4521, the Board is authorized to require certain physical and/or psychological evaluations of its applicants and licensees. In the present example regarding the felony offense of intoxication manslaughter, the Guidelines specify that a chemical dependency evaluation may be required to assist the Board in determining the effect of the individual's criminal history on his/her licensure status. Although §301.4521 authorizes the Board to require and/or request physical and psychological evaluations in situations where the Board has reason to believe that an individual may be unable to practice nursing with reasonable skill and safety, additional notations have been added throughout the Guidelines to indicate the types of evaluations that the Board may request/require in matters involving a particular criminal offense. Although this additional information does not limit the Board's ability to require/request additional types of evaluations in a particular case, it is intended to provide notice to individuals that an evaluation may be required and/or requested in order to assist the Board in determining whether the individual is fit to practice nursing safely and the potential effect the particular criminal offense may have on the individual's licensure status.

The Committee also felt it was important for the Board to reiterate the purpose of the Guidelines and to emphasize their limitations. To that end, pages 1 - 3 of the Guidelines have been amended to include additional information regarding the application of the Guidelines. The Guidelines are intended to inform applicants, licensees, and the general public of the potential effect a particular criminal offense may have on nurse licensure. As such, the Guidelines are based upon criminal offenses that have already been addressed and/or adjudicated by the penal system. The Board will not re-litigate the underlying facts of the criminal matter. Therefore, the amended language makes clear that the Board will consider the potential effect of a criminal offense upon an individual's licensure status as that offense has been previously determined by the penal system.

For certain offense, the Committee also recommended including additional information in the last column of the Guidelines to better explain the offense's connection to the practice of nursing. For example, for the offenses of "arson" and "cruelty to animals", information has been added to the last column of the Guidelines to emphasize that individuals who commit these types of criminal offenses have been linked with underlying psychopathology and/or may be more likely to engage in violent/harmful behaviors toward humans. This additional information clarifies why the Board may be concerned about an individual who has committed one of these offenses. "Aggravated perjury" and all of the prostitution offenses also include additional language better explaining their connection to the practice of nursing.

The Committee also reviewed the recommended range of sanction for each offense listed in the Guidelines. Although the Committee felt that the recommended ranges of sanctions were appropriate for the majority of the offenses, the Committee recommended that offenses primarily related to the use of drugs and/or alcohol be amended to include less severe sanctions if the individual demonstrates compliance with a treatment program and evidence of ongoing sobriety. Therefore, the Guidelines have been amended to include a broader range of recommended sanctions for these types of offenses. In particular, the amended range of sanctions for these types of offenses includes participation in a peer assistance program, as well as licensure suspension, which can either be enforced or probated, depending upon whether an individual is able to demonstrate treatment and twelve consecutive months of verifiable sobriety. These additional options are consistent with the Board's adopted Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or Other Substance Use Disorder, as well as the Board's rules regarding chemical dependency and substance abuse.

The Guidelines have also been amended to clarify the use of certain terminology within the Guidelines. In particular, the term "judicial order" has been amended to include orders of conviction, regardless of the plea entered, deferred adjudications, regardless of the plea entered, and deferred dispositions, including, but not limited to, pre-trial diversion agreements and deferred prosecutions. Further, the term "probation" has been amended to include community supervision, probation, parole, and any other requirement that results from, or is related to, a criminal disposition of any form, including deferred dispositions, such as pre-trial diversion agreements and deferred prosecutions. These amendments are intended to clarify the existing intent of the Guidelines and are consistent with the Board's authority to investigate and take licensure action based upon convictions and deferred dispositions, as set forth in the Nursing Practice Act, particularly §301.452(b)(3).

Finally, the Guidelines have been reorganized based upon recommendations by the Committee. Pages 4 - 14 of the Guidelines contain offenses that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as revocable offenses and/or potential bars to licensure. Pursuant to the terms of §301.4535, an individual who has committed one of the crimes enumerated in §301.4535 shall not be eligible to hold a nursing license until at least five years have passed from the date the individual successfully completes and is dismissed from community supervision or parole. The remaining pages of the Guidelines are arranged alphabetically, to include both felony and misdemeanor offenses. If an offense can be classified under the penal code as either a felony or misdemeanor, the Guidelines recognize this distinction and include a correspond-

ing range of recommended sanctions for the felony offense and the misdemeanor offense. The Committee also recommended including the definition of each crime in the first column of the Guidelines instead of the last column of the Guidelines. As such, the Guidelines have been amended to include a general definition, based upon the elements listed in the penal code, for each offense listed in the Guidelines. A legend has also been added to the second column of the Guidelines that will link a user to the penal code definitions and classifications of the terms "felonies" and "misdemeanors". Hyperlinks have also been added to the third column of the Guidelines that will link a user to the specific penal code provisions cited by the Guidelines for each criminal offense. These changes were recommended by the Committee and adopted by the Board in order to make the Guidelines more user friendly and easier to understand and navigate.

How the Sections Will Function. Adopted §213.33(b) provides the corrected website address where the Guidelines may be accessed. Adopted §213.33(g)(5) provides that the Guidelines, which were approved by the Board and published on May 17, 2013, in the *Texas Register* (38 TexReg 3152) and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html>, must be used by the Board and the State Office of Administrative Hearings (SOAH) when determining the appropriate penalty/sanction in disciplinary and eligibility matters.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority.

The amendments are adopted under the Occupations Code Chapter 53 and §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535.

Section 53.021(a) provides that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (i) an offense that directly relates to the duties and responsibilities of the licensed occupation; (ii) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license; (iii) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or (iv) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Section 53.021(b) states that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Section 53.021(c) states that, except as provided by §53.021(d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of §53.021 if, regardless of the statutory authorization: (i) the person entered a plea of guilty or nolo contendere; (ii) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and (iii) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

Section 53.021(d) provides that a licensing authority may consider a person to have been convicted of an offense for purposes of §53.021 regardless of whether the proceedings

were dismissed and the person was discharged as described by §53.021(c) if, after consideration of the factors described by §53.022 and §53.023(a), the licensing authority determines that: (i) the person may pose a continued threat to public safety; or (ii) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

Section 53.021(e) states that §53.021(c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide: (i) law enforcement or public health, education, or safety services; or (ii) financial services in an industry regulated by a person listed in Section 411.081(i)(19), Government Code.

Section 53.022 provides that, in determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider: (i) the nature and seriousness of the crime; (ii) the relationship of the crime to the purposes for requiring a license to engage in the occupation; (iii) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and (iv) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Section 53.023(a) states that, in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in §53.022: (i) the extent and nature of the person's past criminal activity; (ii) the age of the person when the crime was committed; (iii) the amount of time that has elapsed since the person's last criminal activity; (iv) the conduct and work activity of the person before and after the criminal activity; (v) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and (vi) other evidence of the person's fitness, including letters of recommendation from: (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; (B) the sheriff or chief of police in the community where the person resides; and (C) any other person in contact with the convicted person.

Section 53.023(b) states that the applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by §53.023(a)(6).

Section 53.023(c) states that in addition to fulfilling the requirements of §53.023(b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has: (i) maintained a record of steady employment; (ii) supported the applicant's dependents; (iii) maintained a record of good conduct; and (iv) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Section 53.025(a) states that each licensing authority shall issue guidelines relating to the practice of the licensing authority under Chapter 53. Further, the guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Section 53.025(b) states that a state licensing authority that issues guidelines under §53.025 shall file the guidelines with the secretary of state for publication in the *Texas Register*.

Section 53.025(c) states that a local or county licensing authority that issues guidelines under §53.025 shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having county-wide circulation in that county.

Section 53.025(d) provides that amendments to the guidelines, if any, shall be issued annually.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1545(a) provides that the Board shall adopt rules and guidelines necessary to comply with Chapter 53, except to the extent the requirements of Subtitle E are stricter than the requirements of Chapter 53.

Section 301.1545(b) states that, in its rules under §301.1545, the Board shall list the offenses for which a conviction would constitute grounds for the Board to take action under §53.021 or for which placement on deferred adjudication community supervision would constitute grounds for the Board to take action under Chapter 301.

Section 301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) provides that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.4521(a) defines the term "applicant" as a petitioner for a declaratory order of eligibility for a license or an applicant for an initial license or renewal of a license and the term "evaluation" as a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.

Section 301.4521(b) provides that the Board may require a nurse or applicant to submit to an evaluation only if the Board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of: (i) physical impairment; (ii) mental impairment; or (iii) chemical dependency or abuse of drugs or alcohol.

Section 301.4521(c) provides that a demand for an evaluation under §301.4521(b) must be in writing and state: (i) the reasons probable cause exists to require the evaluation; and (ii) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

Section 301.4521(d) states that, if the nurse or applicant refuses to submit to the evaluation, the Board shall schedule a hearing on the issue of probable cause to be conducted by SOAH. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the Board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The Board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the Board's demand for an evaluation. The order may not be vacated or modified under the Government Code §2001.058.

Section 301.4521(e) states that, if a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under §301.4521(d), the Board may: (i) refuse to issue or renew a license; (ii) suspend a license; or (iii) issue an order limiting the license.

Section 301.4521(f) provides that the Board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the Board for a reason other than a reason listed in §301.4521(b). A request for an evaluation under §301.4521(f) must be in writing and state: (i) the reasons for the request; (ii) the type of evaluation requested; (iii) how the Board may use the evaluation; (iv) that the nurse or applicant may refuse to submit to an evaluation; and (v) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

Section 301.4521(g) states that, if a nurse or applicant refuses to consent to an evaluation under §301.4521(f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant: (i) not later than the 30th day before the date of the hearing, notifies the Board that an evaluation will be introduced into evidence at the hearing; (ii) provides the Board the results of that evaluation; (iii) informs

the Board of any other evaluations by any other practitioners; and (iv) consents to an evaluation by a practitioner that meets Board standards established under §301.4521(h).

Section 301.4521(h) provides that the Board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under §301.4521. The Board shall maintain a list of qualified practitioners. The Board may solicit qualified practitioners located throughout the state to be on the list.

Section 301.4521(i) states that a nurse or applicant shall pay the costs of an evaluation conducted under §301.4521.

Section 301.4521(j) provides that the results of an evaluation under §301.4521 are: (i) confidential and not subject to disclosure under the Government Code Chapter 552; (ii) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be: (A) introduced as evidence in a proceeding before the Board or a hearing conducted by SOAH under Chapter 301; or (B) included in the findings of fact and conclusions of law in a final Board order.

Section 301.4521(k) provides that, if the Board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under §301.4521, the evaluation must be expunged from the Board's records.

Section 301.4521(l) requires the Board to adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under §301.4521.

Section 301.4521(m) states that the authority granted to the Board under §301.4521 is in addition to the Board's authority to make licensing decisions under Chapter 301.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic Board review; (v) suspension of the person's license for a period not to exceed five years; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

Section 301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors.

Section 301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

Section 301.4535(a) provides that the Board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of: (i) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code; (ii) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony; (iii) sexual assault under Section 22.011, Penal Code; (iv) aggravated sexual assault under Section 22.021, Penal Code; (v) continuous sexual abuse of young child or children under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code; (vi) aggravated assault under Section 22.02, Penal Code; (vii) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code; (viii) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code; (ix) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony; (x) an offense under Section 25.07, Penal Code, punished as a felony; (xi) an offense under Section 25.071, Penal Code, punished as a felony; (xii) an agreement to abduct a child from custody under Section 25.031, Penal Code; (xiii) the sale or purchase of a child under Section 25.08, Penal Code; (xiv) robbery under Section 29.02, Penal Code; (xv) aggravated robbery under Section 29.03, Penal Code; (xvi) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (xvii) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

Section 301.4535(a-1) states that an applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under §301.4535(a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the Board establishes by rule criteria that would permit the issuance or renewal of the license.

Section 301.4535(b) states that on final conviction or a plea of guilty or nolo contendere for an offense listed in §301.4535(a), the Board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

Section 301.4535(c) states that a person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by §301.4535(a).

§213.33. Factors Considered for Imposition of Penalties/Sanctions.

(a) The Board and the State Office of Administrative Hearings (SOAH) shall utilize the Disciplinary Matrix set forth in subsection (b) of this section in all disciplinary and eligibility matters.

(b) The Disciplinary Matrix is as follows:
Figure: 22 TAC §213.33(b)

(c) The Board and SOAH shall consider the following factors in conjunction with the Disciplinary Matrix when determining the appropriate penalty/sanction in disciplinary and eligibility matters. The following factors shall be analyzed in determining the tier and sanction level of the Disciplinary Matrix for a particular violation or multiple violations of the Nursing Practice Act (NPA) and Board rules:

- (1) evidence of actual or potential harm to patients, clients, or the public;
- (2) evidence of a lack of truthfulness or trustworthiness;
- (3) evidence of misrepresentation(s) of knowledge, education, experience, credentials, or skills which would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the fact(s) misrepresented where such reliance could be unsafe;
- (4) evidence of practice history;
- (5) evidence of present fitness to practice;
- (6) whether the person has been subject to previous disciplinary action by the Board or any other health care licensing agency in Texas or another jurisdiction and, if so, the history of compliance with those actions;
- (7) the length of time the person has practiced;
- (8) the actual damages, physical, economic, or otherwise, resulting from the violation;
- (9) the deterrent effect of the penalty imposed;
- (10) attempts by the licensee to correct or stop the violation;
- (11) any mitigating or aggravating circumstances, including those specified in the Disciplinary Matrix;
- (12) the extent to which system dynamics in the practice setting contributed to the problem;
- (13) whether the person is being disciplined for multiple violations of the NPA or its derivative rules and orders;
- (14) the seriousness of the violation;
- (15) the threat to public safety;
- (16) evidence of good professional character as set forth and required by §213.27 of this chapter (relating to Good Professional Character);

(17) participation in a continuing education course described in §216.3(f) of this title (relating to Requirements) completed not more than two years before the start of the Board's investigation, if the nurse is being investigated by the Board regarding the nurse's selection of clinical care for the treatment of tick-borne diseases; and

(18) any other matter that justice may require. The presence of mitigating factors does not constitute a requirement of dismissal of a violation of the NPA and/or Board rules.

(d) Each specific act or instance of conduct may be treated as a separate violation.

(e) The Board may, upon the finding of a violation, enter an order imposing one or more of the following disciplinary actions, with or without probationary stipulations:

(1) Denial of the person's application for a license; license renewal; reinstatement of a revoked, suspended, or surrendered license; or temporary permit;

(2) Approval of the person's application for a license; license renewal; reinstatement of a revoked, suspended, or surrendered license; or temporary permit, with reasonable probationary stipulations as a condition of issuance, renewal, or reinstatement of the license or temporary permit. Additionally, the Board may determine, in accordance with §301.468 of the NPA, that an order denying a license application, license renewal, license reinstatement, or temporary permit be probated. Reasonable probationary stipulations may include, but are not limited to:

(A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board as a condition for the issuance, renewal, or reinstatement of the license or temporary permit;

(B) submit to an evaluation as outlined in subsections (k) and (l) of this section or pursuant to the Occupations Code §301.4521;

(C) participate in a program of education or counseling prescribed by the Board;

(D) limit specific nursing activities and/or periodic Board review;

(E) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board;

(F) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(G) perform public service which the Board considers appropriate;

(3) Issuance of a Warning. The issuance of a Warning shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

(A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board;

(B) submit to an evaluation as outlined in subsections (k) and (l) of this section or pursuant to the Occupations Code §301.4521;

(C) participate in a program of education or counseling prescribed by the Board;

(D) limit specific nursing activities and/or periodic Board review;

(E) practice for a specified period of at least one year under the direction of a registered nurse or vocational nurse designated by the Board;

(F) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(G) perform public service which the Board considers appropriate;

(4) Issuance of a Reprimand. The issuance of a Reprimand shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

(A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board;

(B) submit to an evaluation as outlined in subsections (k) and (l) of this section or pursuant to the Occupations Code §301.4521;

(C) participate in a program of education or counseling prescribed by the Board;

(D) limit specific nursing activities and/or periodic Board review;

(E) practice for a specified period of at least two years under the direction of a registered nurse or vocational nurse designated by the Board;

(F) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(G) perform public service which the Board considers appropriate;

(5) Limitation or restriction of the person's license, including limits on specific nursing activities or periodic Board review;

(6) Suspension of the person's license. The Board may determine that the order of suspension be enforced and active for a specific period and/or probated with reasonable probationary stipulations as a condition for lifting or staying the order of suspension. Reasonable probationary stipulations may include, but are not limited to, one or more of the following:

(A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board;

(B) submit to an evaluation as outlined in subsections (k) and (l) of this section or pursuant to the Occupations Code §301.4521;

(C) participate in a program of education or counseling prescribed by the Board;

(D) limit specific nursing activities and/or periodic Board review;

(E) practice for a specified period of not less than two years under the direction of a registered nurse or vocational nurse designated by the Board;

(F) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(G) perform public service which the Board considers appropriate;

(7) Remit payment of the administrative penalty, fine, or assessment of hearing costs;

(8) Acceptance of a Voluntary Surrender of a nurse's license(s);

(9) Revocation of the person's license;

(10) Require participation in remedial education course or courses prescribed by the Board which are designed to address those competency deficiencies identified by the Board;

(11) Assessment of a fine as set forth in §213.32 of this chapter (relating to Corrective Action Proceedings and Schedule of Administrative Fines);

(12) Assessment of costs as authorized by the Occupations Code §301.461 and the Government Code §2001.177; or

(13) Require successful completion of a Board approved peer assistance program.

(f) Every disciplinary order issued by the Board shall require the person subject to the order to participate in a program of education or counseling prescribed by the Board, which at a minimum, will include a review course in nursing jurisprudence and ethics.

(g) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Board and SOAH when determining the appropriate penalty/sanction in disciplinary and eligibility matters:

(1) Disciplinary Sanctions for Fraud, Theft, and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on May 17, 2013 in the *Texas Register* (38 TexReg 3152) and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html>.

(h) To the extent that a conflict exists between the Disciplinary Matrix and a disciplinary and eligibility sanction policy described in subsection (g) of this section, the Disciplinary Matrix controls.

(i) Unless otherwise specified, fines shall be payable in full by cashier's check or money order not later than the 45th day following the entry of an Order.

(j) The payment of a fine shall be in addition to the full payment of all applicable fees and satisfaction of all other applicable requirements of the NPA and the Board's rules.

(k) If the Board has probable cause to believe that a person is unable to practice nursing with reasonable skill and safety because of physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol, the Board may require an evaluation that meets the following standards:

(1) The evaluation must be conducted by a Board-approved addictionologist, addictionist, medical doctor, neurologist, doctor of osteopathy, psychologist, neuropsychologist, advanced practice regis-

tered nurse, or psychiatrist, with credentials appropriate for the specific evaluation, as determined by the Board. In all cases, the evaluator must possess credentials, expertise, and experience appropriate for conducting the evaluation, as determined by the Board. The evaluator must be familiar with the duties appropriate to the nursing profession.

(2) The evaluation must be designed to determine whether the suspected impairment prevents the person from practicing nursing with reasonable skill and safety to patients. The evaluation must be conducted pursuant to professionally recognized standards and methods. The evaluation must include the utilization of objective tests and instruments with valid and reliable validity scales designed to test the person's fitness to practice. The evaluation may include testing of the person's psychological or neuropsychological stability only if the person is suspected of mental impairment, chemical dependency, or drug or alcohol abuse. If applicable, the evaluation must include information regarding the person's prognosis and medication regime.

(3) The person subject to evaluation shall sign a release allowing the evaluator to review the file compiled by the Board staff and a release that permits the evaluator to release the evaluation to the Board. The person subject to evaluation should be provided a copy of the evaluation upon completion by the evaluator; if not, the Board will provide the person a copy.

(l) When determining evidence of present fitness to practice because of known or reported unprofessional conduct, lack of good professional character, or prior criminal history:

(1) The Board may request an evaluation conducted by a Board-approved forensic psychologist, forensic psychiatrist, or advanced practice registered nurse who:

(A) evaluates the behavior in question or the prior criminal history of the person;

(B) seeks to predict:

(i) the likelihood that the person subject to evaluation will engage in the behavior in question or criminal activity again, which may result in the person committing a second or subsequent reportable violation or receiving a second or subsequent reportable adjudication or conviction; and

(ii) the continuing danger, if any, that the person poses to the community;

(C) is familiar with the duties appropriate to the nursing profession;

(D) conducts the evaluation pursuant to professionally recognized standards and methods; and

(E) utilizes objective tests and instruments, as determined and requested by the Board, that are designed to test the psychological or neuropsychological stability, fitness to practice, professional character, and/or veracity of the person subject to evaluation.

(2) The person subject to evaluation shall sign a release allowing the evaluator to review the file compiled by Board staff and a release that permits the evaluator to release the evaluation to the Board.

(3) The person subject to evaluation should be provided a copy of the evaluation upon completion by the evaluator; if not, the Board will provide the person a copy.

(m) Notwithstanding any other provision herein, a person's failure to appear in person or by attorney on the day and at the time set for hearing in a contested case shall entitle the Board to revoke the person's license.

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 June 21, 2013.

TRD-201302592

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Effective date: July 11, 2013

Proposal publication date: May 17, 2013

For further information, please call: (512) 305-6822



CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.14

Introduction. The Texas Board of Nursing (Board) adopts amendments to §217.14, concerning Registered Nurses Performing Radiologic Procedures. The amendments are adopted without changes to the proposed text published in the May 17, 2013, issue of the *Texas Register* (38 TexReg 2970) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §301.151 and §601.253 and update outdated references in the rule and correct grammatical and typographical errors.

How the Section Will Function. Adopted §217.14(a) updates the reference to The Joint Commission and provides that a registered nurse who performs radiologic procedures other than in a hospital that participates in the federal Medicare program or that is accredited by The Joint Commission must submit an application for registration to the Board.

Adopted §217.14(d) updates references to the applicable rules of the Texas Department of State Health Services and correctly references the Medical Radiologic Technologist Certification Act. The amended subsection also provides that a registered nurse whose functions include radiologic procedures must act within the scope of the Nursing Practice Act and the Board's rules and must comply with the training requirements and limitations of the Medical Radiologic Technologist Certification Act and the Texas Department of State Health Services rules, 25 TAC §§140.517 - 140.522. In addition, adopted §217.14(d) requires the registered nurse to be in compliance with the Texas Medical Practice Act, the Texas Pharmacy Act, and any applicable laws of the State of Texas.

Adopted §217.14(e) provides that any nurse who violates the Board's rules shall be subject to disciplinary action by the Board under the Occupations Code Chapter 301 and the Board's rules.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority.

The amendments are adopted under the Occupations Code §301.151 and §601.253.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the

practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 601.253(a) provides that the Board may adopt rules governing registered nurses performing radiologic procedures under §601.151 or §601.154 and shall require registered nurses performing radiologic procedures under §601.151 to register with the Board and to identify the practitioner ordering the procedures.

Section 601.253(b) states that the Board shall notify the agency licensing the practitioner that the nurse has registered under §601.253.

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 June 20, 2013.

TRD-201302576

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Effective date: July 10, 2013

Proposal publication date: May 17, 2013

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER R. VIATICAL AND LIFE SETTLEMENTS

28 TAC §§3.1701 - 3.1717

The Texas Department of Insurance adopts the repeal of 28 TAC Chapter 3, Subchapter R, §§3.1701 - 3.1717, concerning viatical and life settlements. The repeal of the subchapter is adopted without changes to the proposed text published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10080).

REASONED JUSTIFICATION. The repeal of the subchapter is necessary because Insurance Code Chapter 1111, Subchapter A, was repealed by House Bill 2277, 82nd Legislature, Regular Session, effective September 1, 2011. In conjunction with this repeal, the department is adopting new Subchapter R, §§3.1701 - 3.1703, 3.1720 - 3.1730, 3.1740 - 3.1744, and 3.1760, to implement the new Life Settlements Act, Insurance Code Chapter 1111A, also published in this issue of the *Texas Register*.

HOW THE SECTIONS WILL FUNCTION. The adoption of the repeal will result in the repeal of Chapter 3, Subchapter R, §§3.1701 - 3.1717, concerning viatical and life settlements. The repeal will allow the new Subchapter R to implement the new Life Settlements Act, Insurance Code Chapter 1111A, also published in this issue of the *Texas Register*.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The department did not receive any comments on the published proposal related to the repeal of Subchapter R.

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

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 June 24, 2013.

TRD-201302628

Sara Waitt

General Counsel

Texas Department of Insurance

Effective date: August 1, 2013

Proposal publication date: December 28, 2012

For further information, please call: (512) 463-6327



CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER R. LIFE SETTLEMENT

Texas Department of Insurance adopts new 28 TAC Chapter 3, Subchapter R, §§3.1701 - 3.1703, 3.1720 - 3.1730, 3.1740 - 3.1744, and 3.1760, concerning life settlements. The adopted rules include life settlement brokers and providers licensing, life settlement contract regulation, and annual data reporting requirements. Sections 3.1702, 3.1720 - 3.1725, 3.1728, 3.1730, 3.1740 - 3.1744, and 3.1760 are adopted with changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10081). Sections 3.1701, 3.1703, 3.1726, 3.1727, and 3.1729 are adopted without changes.

REASONED JUSTIFICATION. The new subchapter is necessary to implement HB 2277, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011. HB 2277 amended Subtitle A, Title 7, of the Insurance Code, by adding new Chapter 1111A and repealing Insurance Code Chapter 1111, Subchapter A. In conjunction with this adoption TDI is adopting the repeal of existing 28 TAC Chapter 3, Subchapter R, §§3.1701 - 3.1717, concerning viatical and life settlements, also published in this issue of the *Texas Register*. Section 1111A.015 authorizes the commissioner to adopt rules necessary to implement Chapter 1111A and regulate the activities and relationships of providers, brokers, insurers, and their authorized representatives. These new rules implement the Life Settlements Act. The entire adoption order is part of the reasoned justification for the new sections.

TDI posted on its website an informal concept paper and a draft of the proposed new rules concerning life settlements on April 27, 2012. In the informal posting, TDI requested comments on the substance of the draft rules, the accuracy of TDI's estimates of costs to comply with the draft rules, and what costs certain provisions in the draft would entail. On May 11, 2012, TDI held a public meeting to hear and consider comments from interested parties relating to the informal draft rule text and cost note estimates.

TDI held a public hearing on the rule proposal on January 29, 2013. During the hearing, TDI received both written and oral comments on the published proposal. In response to these comments, TDI has changed some of the proposed language in the text of the rule as adopted. TDI has also made non-substantive editorial changes necessary for clarification and to conform to the TDI style guidelines. None of the changes made to the proposed text, either as a result of comments or as a result of necessary clarification, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

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

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

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

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

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

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

In accord with Insurance Code §1111A.003(h), the Application for a Life Settlement Provider or Broker License form, adopted by reference in §3.1720(a), specifies the information the commissioner requires an applicant to provide. Under §3.1721(c),

the form requires the applicant to provide basic contact information. Additionally, the form requires the applicant to certify the state of domicile, designation of agent for service of process, an acknowledgement and acceptance of appointment as agent for service of process, a certificate of status from the Texas Secretary of State and, if not domiciled in Texas, a consent to jurisdiction. This section also requires filing with the application a list of officers, directors, and shareholders owning 10 percent or more of the entity, and a list of key employees. Officers, directors, shareholders, and key employees must submit fingerprints. The form provides instructions and a checklist to assist in the application. Life settlement providers must also submit a plan of operation in accord with §1111A.003(j)(1). Both life settlement brokers and providers must submit an antifraud plan required by §1111A.003(j)(5) as specified by §1111A.022.

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

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

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

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

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

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

Section 3.1724 sets out provisions for continuing education providers that want to offer life settlement broker continuing education. Continuing education providers must comply with 28 TAC Chapter 19, §§19.1005, 19.1007, 19.1008 - 19.1011, and 19.1014.

Section 3.1725 states the procedure and requirements for licensed life insurance agents to provide notification to TDI when they are providing the services of a life settlement broker. Texas Insurance Code Chapter 4054 specifies the different types of licenses an agent that provides life, accident, and health insurance coverage may have. Insurance Code §1111A.003(d) requires that the notification must include an acknowledgement by the life insurance agent that the agent will operate as a broker in accord with Chapter 1111A. Finally, the section puts life insurance agents on notice that a violation of Chapter 1111A or this subchapter may lead to revocation of their license or other sanctions on their life insurance agent license.

Section 3.1726 states the provisions from which a broker who acts solely as a life expectancy estimator are exempt. Insurance Code §1111A.026 allows the commissioner to exempt additional provisions if the commissioner finds that applying those provisions to the broker is unnecessary for ensuring public welfare.

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

Section 3.1728 provides specificity regarding one portion of the fiduciary duty a life settlement broker owes to an owner. The section is consistent with the definitions of "broker" and "life settlement contract" found in Insurance Code §1111A.002. The section clarifies that a life settlement broker must not negotiate a life settlement contract that would result in less money paid to the policy owner than the applicable cash surrender value or accel-

erated death benefit at the time of application for a life settlement contract. The section also prohibits life settlement brokers from exclusively negotiating with a single life settlement provider.

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

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

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

Generally, §3.1740 is based on the form filing requirements for life insurance forms in Chapter 3, Subchapter A, of this title. Under §1111A.005(a), a person may not use any form of life settlement contract in this state unless the form has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts. Life settlement contracts, disclosures, and verifications of coverage must be filed for review and approval prior to use. Other forms may be submitted as file and use. Subsection 3.1740(o) specifies the filing fees for filing a complete life settlement contract, with forms included; separate individual forms; resubmission of a previously disapproved form; and filing a previously withdrawn form. A life settlement contract may contain multiple forms and, if filed together under one filing, requires only a single \$100 filing fee. If the forms are filed separately, each filing will have a filing fee specified in §3.1740(o). This section adopts by reference the Transmittal Checklist for Life/Health Rate and Form Filings for the submission of life settlement forms.

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

Section 3.1742 requires the delivery of a shopper's guide during the solicitation process. Insurance Code §1111A.012(a) requires a buyer's guide or similar consumer advisory package as prescribed by the commissioner. The section adopts by

reference the shopper's guide titled "Important Information You Should Know Before Entering Into a Life Settlement," which contains useful consumer information in a question and answer format.

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

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

Section 3.1760 prescribes the reporting requirements for the annual statement all life settlement providers must provide not later than March 1 of each year. Insurance Code §1111A.006 specifies the required data for the annual report. Providers must submit the annual report electronically in an Excel spreadsheet via email to lifehealth@tdi.texas.gov.

TDI makes the following changes to the proposed text as a result of comment.

TDI adopts new §3.1702(3) which postpones the effective date of the subchapter until August 1, 2013. Therefore, under §3.1721(k), applications are required not later than 30 days after the effective date of this subchapter, August 1, 2013.

TDI revises §3.1721(b)(3), to state, "A life settlement broker or provider subject to the provisions of this subchapter must apply for issuance of the life settlement broker's or provider's license in the life settlement broker's or provider's legal name and may only act within the scope of authority granted by the license. If a person holds a license authorizing the person to act as a life settlement broker or provider, that person need not obtain an additional license to participate in a registered partnership or corporate entity of the same type in this state, but the partnership or corporate entity with which the person participates must apply for and hold, in its own legal name, a separate license to conduct business as a life settlement broker or provider in this state." The change strikes, "engaged in the business of life settlements" from the first sentence in §3.1721(b)(3).

TDI revises §3.1721(c)(2)(B)(ii) to read, "if the applicant is a subsidiary of a parent or holding company, an organizational chart showing the relationship between the parent and all affiliated entities. 'Affiliate' and 'subsidiary' have the meaning assigned by Insurance Code §823.003." The language, adapted from the National Association of Insurance Commissioners' (NAIC) Life Blank Filing Instructions for Schedule Y; Organization Chart, reduces the potential confusion over what constitutes an indirect relationship between parent and holding companies and subsidiaries.

TDI changes §3.1721(c)(5) to state, "the applicant's legal name, including any assumed name, used by a life settlement broker or provider in the conduct of business under a license is subject to the requirements of §19.902 of this title (relating to One Agent, One License), except that a separate application is not required for a life settlement broker or provider who conducts business under a single assumed name and registers that name with the department on the life settlement broker's or provider's applica-

tion for license." The change clarifies the scope of the requirement, in that the assumed names reported are only for those used in the conduct of business related to the license sought.

A revision is made to §3.1728(1) so that the paragraph reads, "receiving compensation for negotiating a life settlement contract that would result in the owner receiving less than either the cash surrender value or accelerated death benefit, if such accelerated death benefit may be claimed at the time the owner enters into the life settlement contract, of the life insurance policy payable at the time of application for a life settlement contract." The language adds clarity to how the accelerated death benefit, if applicable, is determined for purposes of breach of a life settlement broker's fiduciary duty.

The term "licensed life settlement" before "provider" is added to §3.1730(a) and the word "licensed" is added to §3.1741(a)(5). The changes clarify that only life settlement brokers, providers, and their authorized representatives are contemplated by Insurance Code §1111A.006(d)(5) to verify health status.

TDI revises §3.1741(a)(1) to state that an entire contract provision should apply to the contract, together with the application, including any amendments and attachments. The amended paragraph states, "a provision that the life settlement contract must provide that the contract or the contract together with the application, including any amendments and attachments, constitute the entire contract between the parties."

TDI moves §3.1741(c)(2) to its own subsection within §3.1741. This change clarifies that accidental death benefits are a separate issue related to, but distinct from, retained ownership. Additionally, TDI adds to the section language that states, "Nothing contained here requires the life settlement provider or any subsequent owner of the policy to continue any accidental death benefits attached to the policy by rider or endorsement."

TDI makes clarifying changes to 3.1741(j), now redesignated as subsection (k), relating to verification of coverage forms. A list of potential items that may be requested includes the name of the policy owner, the cash surrender value of the policy, the accelerated death benefit at that time, the premium, and mode of premium.

TDI deletes proposed §3.1741(k) related to premium finance loan requirements. The rule text as proposed already addresses premium finance structures that are life settlement contracts at §3.1740.

TDI revises §3.1743 to state, "A life settlement provider may not offer an owner a life settlement contract with a minimum value that is less than the cash surrender value or accelerated death benefit, if such accelerated death benefit may be claimed at the time the owner enters into the life settlement contract, of the life insurance policy payable at the time of application for a life settlement contract." The change adds clarity to how the accelerated death benefit, if applicable, is determined for purposes of breach of a life settlement broker's fiduciary duty. This change is consistent with the revisions made to §3.1728.

TDI revises §3.1744(a) to read, "Filing requirement. Each life settlement broker or provider must file with the department any advertisement or other solicitation materials used to market life settlement contracts or broker's or provider's services to owners in this state on or before the date such materials are disseminated. Advertising filings should be filed with the department at the address specified in §21.120 of this title (relating to Filing for Review)." The change clarifies that the advertising or other so-

licitation materials that the provision pertains to is specific to that which is marketed to owners of life policies.

In addition to changes made as a result of comment, TDI makes the following changes to the proposed text.

A change has been made to four of the forms adopted by reference in §3.1720. The License Application for a Life Settlement Provider or Broker form (revised April 2013) is revised to clarify questions and to delete redundant questions. The Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form (revised April 2013) is revised to clarify and to be consistent with the original license application. The Life Agent Notification to TDI to Act as a Life Settlement Broker form (revised March 2013) is revised to delete the checkbox selection for "Renewal Application (no fee). The Life Settlement License will renew concurrently with Life License." Renewal is automatic for life agents so the checkbox is not necessary. Additionally, the Biographical Affidavit for Life Settlement Providers or Brokers form is revised to make nonsubstantive changes to the forms letterhead.

A change has been made to the proposed text of §3.1722(c)(2) to also require each life settlement broker and provider to keep the department informed of a change in the email address provided, if one was provided. The language in §3.1722 (c)(2) now reads, "Each life settlement broker and provider must keep the department informed of the licensee's current mailing, physical addresses, and email address (if any). The department will use the mailing and physical addresses on the most recent application or notification the life settlement broker or provider submitted to the department to communicate with and provide notices to the life settlement broker or provider."

A change has been made to the proposed text of §3.1723(c)(2). The exemption for brokers who are licensed as a life insurance agent and who operate as a life settlement broker has been changed so that it is consistent with §3.1725 and Insurance Code §1111A.003(p). The language in §3.1723(c)(2) now reads, "the life settlement broker holds a life insurance agent license or acts solely as a life expectancy estimator. A life insurance agent must continue to meet all applicable license and continuing education requirements for the life insurance agent license."

A change has been made to the proposed text in §3.1725. It is not required that the life agent notify TDI on subsequent renewal of the life insurance agent license. TDI can track the election internally, and eliminating the renewal requirement reduces the administrative burden for both TDI and for life agents acting as life settlement brokers. As a result, proposed §3.1725(b) has been deleted. Accordingly, the remaining subsections in §3.1725 are redesignated.

Changes have been made to the proposed text of §3.1760(d). The requirement for reporting 2011 data is updated to reflect collection of 2012 data. This change is necessary to reflect the effective date of the adopted rule and to collect timely data. TDI acknowledges and appreciates the data that life settlement providers submitted prior to the adoption of rules on the matter. As a result, an additional change has been made to §3.1760(d) to clarify that life settlement providers that already provided this information to TDI do not need to provide life expectancy estimator information, as specified in §3.1760(b)(3)(E), for 2011 and 2012. The Life Settlement Provider Data Report form (revised March 2013) has also been revised so that it asks for 2011 and 2012 data.

The adopted rules also make numerous nonsubstantive editorial changes to reflect agency style and improve readability throughout, including forms adopted by reference. Email addresses have been changed to reflect the new TDI domain name. The TDI mailing address has been changed to include the abbreviation "St." in place of "street." New revision dates are indicated for forms adopted by reference that were changed since they were proposed.

Nonsubstantive changes have been made to §§3.1720(a) - (d), 3.1740(d), 3.1742, and 3.1760(b) to identify when the form was last revised. A change has been made to the Important Information You Should Know Before Entering Into A Life Settlement form adopted by reference in §3.1720 to revise the contact email address.

TDI makes additional changes as a result of comment, as detailed in the Summary of Comments and Agency Response section of this adoption.

HOW THE SECTIONS WILL FUNCTION. Section 3.1701 specifies the purpose and severability of the subchapter. Section 3.1702 provides the applicability and scope of the subchapter. Section 3.1703 provides the definitions for the subchapter.

Section 3.1720 specifies the licensing and notification forms adopted by reference in the division. The forms include an Application for a Life Settlement Provider or Broker License form; Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form; Life Agent Notification to TDI to Act as a Life Settlement Broker form; and Biographical Affidavit for Life Settlement Providers or Brokers form.

Section 3.1721 specifies the procedures and requirements for life settlement broker and provider license application and establishes the required fees life settlement brokers and providers must pay to TDI. Section 3.1722 specifies the procedures and requirements for life settlement broker and provider license renewal application, change of information, and fees. Section 3.1723 provides the continuing education and training requirements that life settlement brokers must fulfill. Section 3.1724 sets out provisions for continuing education providers that want to offer life settlement broker continuing education. Section 3.1725 states the procedure and requirements for licensed life insurance agents to provide notice to TDI when they are providing the services of a life settlement broker. Section 3.1726 includes the provisions from which a broker who acts only as a life expectancy estimator is exempt. Section 3.1727 clarifies how Insurance Code §101.051 functions in the context of life settlements with respect to statutory unauthorized insurance provisions. Section 3.1728 provides specificity regarding one portion of the fiduciary duty a life settlement broker owes to an owner. Section 3.1729 provides a maintenance of records requirement for life settlement brokers and providers. Section 3.1730 specifies who may verify the health status of an insured.

Section 3.1740 provides the form filing requirements and procedures for the approval, disapproval, and withdrawal of forms. Section 3.1741 specifies required provisions that apply to life settlement forms. Section 3.1742 requires the delivery of a shopper's guide during the solicitation process. Section 3.1743 specifies the minimum value of a life settlement contract offer. Section 3.1744 provides that a life settlement broker or provider must file all advertising and solicitation materials used to market life settlements or the licensee's services in this state.

Section 3.1760 prescribes the reporting requirements for the annual statement all life settlement providers must provide not later than March 1 of each year.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Section 3.1721(b)(3)

Comment: One commenter states that TDI should strike "engaged in the business of life settlements" from the first sentence in proposed §3.1721(b)(3). The commenter asserts that the change would clarify that the licensing provisions of the section are related to the defined function of the license, and not the broader activities that may constitute all the business of life settlements.

Agency Response: TDI agrees to make the suggested change for clarity and consistency. TDI revised proposed §3.1721(b)(3), to state, "A life settlement broker or provider subject to the provisions of this subchapter must apply for issuance of the life settlement broker's or provider's license in the life settlement broker's or provider's legal name and may only act within the scope of authority granted by the license. If a person holds a license authorizing the person to act as a life settlement broker or provider, that person need not obtain an additional license to participate in a registered partnership or corporate entity of the same type in this state, but the partnership or corporate entity with which the person participates must apply for and hold, in its own legal name, a separate license to conduct business as a life settlement broker or provider in this state."

Section 3.1721(c)(2)(A)

Comment: One commenter requests that TDI strike the requirement to provide a list and description of any pending lawsuits or judgments naming the applicant as defendant or co-defendant. The commenter states that they do not object to the information being requested, but question its placement in the plan of operation.

Agency Response: TDI declines to make the change. The required information is one of the elements of the plan of operation. TDI appreciates the willingness of life settlement providers to provide the information. Insurance Code §1111A.003(j) requires the commissioner to investigate each applicant. A listing of pending lawsuits or judgments as part of a detailed plan of operation provides insight into the ongoing operations of the applicant. Additionally, the information helps the commissioner investigate whether the applicant is competent, trustworthy, and has a good business reputation.

Section 3.1721(c)(2)(B)(ii)

Comment: One commenter states that TDI should amend §3.1721(c)(2)(B)(ii) to read, "if the applicant is a subsidiary of a parent or holding company, an organizational chart showing the relationship of the subsidiary to the parent or holding company and all direct and indirect owners of the subsidiary." The commenter asserts that the suggested language would better elicit information from the applicant regarding all the relationships between the parent and holding company and subsidiaries. The commenter states that the phrase "all related persons and entities" in the proposed subparagraph lacks clarity and would be too broad.

Agency Response: TDI declines to make the suggested change, but does clarify the section. Section 3.1721(c)(2)(B)(ii), as adopted, reads, "if the applicant is a subsidiary of a parent or holding company, an organizational chart showing the relation-

ship between the parent and all affiliated entities. 'Affiliate' and 'subsidiary' have the meaning assigned by Insurance Code §823.003." This language mirrors the NAIC Life Blank Filing Instructions for Schedule Y; Organization Chart. The definitions for "affiliate" and "subsidiary" from the Insurance Code are used to clarify the technical meaning of the terms. TDI recognizes that relationships among and between entities can be complex. The use of an organization chart will assist TDI in understanding these relationships. Further, the adopted language eliminates the potential confusion over what constitutes an indirect relationship between parent and holding companies and subsidiaries.

Section 3.1721(c)(5)

Comment: One commenter states that TDI should amend §3.1721(c)(5) by striking "life settlement" from the phrase "the conduct of life settlement business" in the paragraph to clarify that any assumed name used in the conduct of business related to the license must be included on the applicant's submission to TDI for licensure. The commenter states that if the language were not changed, the required notification of the use of assumed names would apply to a broader context than the scope of the license.

Agency Response: TDI agrees to make the suggested change. TDI revised adopted §3.1721(c)(5), to state, "the applicant's legal name, including any assumed name, used by a life settlement broker or provider in the conduct of business under a license is subject to the requirements of §19.902 of this title (relating to One Agent, One License), except that a separate application is not required for a life settlement broker or provider who conducts business under a single assumed name and registers that name with the department on the life settlement broker's or provider's application for license."

Section 3.1721(k)

Comment: A commenter suggests that §3.1721(k) be amended to state, "Submission required for existing brokers and providers. A person licensed to act as a viatical or life settlement provider as of the effective date of this subchapter, shall be deemed qualified for licensure as a life settlement provider or broker, and shall be subject to all the provisions of this subchapter as if the person were originally licensed as a life settlement provider or broker." The proposed language required a life settlement broker or provider, including one operating under a temporary license or operating under a certificate of authority issued prior to September 1, 2011, to submit an application in accord with this section not later than 30 days after the effective date of this subchapter. The commenter asserts that the suggested language is more appropriate to ensure that existing licensees may continue without interruption of business. The commenter asserts that the suggested language has been used in other states and it easily understood to allow for continued business operation.

Another commenter states that the decision by the department to require an application to be filed within 30 days after the adoption of the rules is purely arbitrary with no statutory authority. Further, the commenter asserts that since the department has required well over a year to prepare the rules it would not be unreasonable to allow a license renewal applicant at least 60 days to file an application, especially in view of the time required for an applicant to prepare the necessary documents. The commenter also states that many of the forms necessary to complete the application have not been published, to the detriment of early action for compliance.

Agency Response: TDI declines to make the suggested changes, but makes a change to specify the effective date of the adopted subchapter. TDI recognizes that affected persons may require additional time to adequately complete the adoption application form. Therefore, TDI is not making a change to §3.1721(k), but adopts new §3.1702(3) which postpones the effective date of the subchapter until August 1, 2013. TDI also recognizes that there is a need for continued business operation and does not intend to interrupt lawfully conducted commerce. Applicants are required to file their applications not later than 30 days after August 1, 2013, which will be the effective date of this subchapter. Applicants timely filing an application will not be required to cease doing business while the application is reviewed.

Section 3.1722(e)

Comment: One commenter asserts that there is no authorization in Insurance Code Chapter 1111A to allow licensees to renew expired licenses if the renewal application is made within certain time limits. The commenter states that there is no deadline in §3.1722 that provides for when a timely renewal application must be filed.

Agency Response: TDI declines to make the suggested change. A timely renewal application is one that is submitted prior to the expiration of an expired license. However, because it is administratively more efficient, the adopted rule provides that even expired licenses can be renewed so long as the license has not been expired for more than 90 days. Section 3.1722(e) is a more lenient rule than the alternative of not allowing renewal immediately after a license's expiration. The additional renewal grace period saves licensees and TDI from having to submit and review the longer application forms. Further, permitting the late renewal of a license is less costly to licensees than requiring a new application. Renewal of newly expired licenses also maintains licensees under their original license number, limiting the necessity of tracking individuals or entities under multiple license numbers. TDI has the discretion in accord with Insurance Code §1111A.003 and §1111A.015 to promulgate rules to administer licenses in a reasonable way to implement Insurance Code Chapter 1111A.

Section 3.1726

Comment: One commenter suggests that TDI exempt life expectancy estimators from "related regulations" in addition to §§1111A.003(p), 1111A.012, and 1111A.014(l) and (m).

Another commenter requests new language for §3.1726 that would exempt life expectancy estimators from all of the provisions in Insurance Code Chapter 1111A for any broker who acts solely as a life expectancy estimator and does not otherwise engage in any activities that fall within the definition of "broker" found in §1111A.002(2). The commenter asserts that life expectancy estimation is a highly specialized field and that nationally recognized life expectancy providers do not engage in the business of life settlements. The commenter states that it is far from clear that the intent of the Legislature was to require all life expectancy providers to be licensed as life settlement brokers. The Legislature did not create a comprehensive scheme to regulate life expectancy providers. Further, no other state requires life expectancy estimators to be licensed as brokers. The commenter asserts that it is not evident how such a licensing scheme would enhance protection. The commenter requests that TDI expressly exclude pure life expectancy estimators from licensing and other requirements.

Agency Response: TDI declines to make the suggested change. TDI does observe the nature and content of other states' regulations, but must look to the requirements and authority specified by the Texas Legislature. Life expectancy estimation is specifically contemplated within the definition of "broker" in Insurance Code §1111A.002(2). In recognition of the highly specialized nature of life expectancy estimation, TDI has exempted persons declaring that they will only perform life expectancy estimates from the continuing education requirements in §3.1723, in addition to other exemptions specified in §3.1726(a). TDI has decided not to exempt life expectancy estimators from providing an antifraud plan under Insurance Code §1111A.003(j)(5) and §1111A.022 because of recent allegations of life expectancy estimate related misconduct.

Continuing to require an application from persons who are solely life expectancy estimators will enable TDI to track and monitor individuals engaged in the business of life settlements via the creation of life expectancy estimates. A life expectancy estimator may have his or her license suspended or revoked due to fraud or other misconduct. By requiring a license, the statute allows other entities engaged in the business of life settlements to check whether a life expectancy estimator is licensed in Texas. In addition, through licensing life expectancy estimators, TDI will be able to provide more empirical information to inform future, possibly more comprehensive, regulations.

Section 3.1727

Comment: One commenter requests that TDI strike all of §3.1727. The commenter asserts that the section creates a conflict of law. The commenter argues that the Life Settlements Act expressly establishes that a life settlement contract is between an owner and a provider. An owner is defined as a person who owns a life insurance policy. A policy is defined, at §1111A.002, as a policy of life insurance "owned by a resident of this state." The rule cannot regulate transactions where the insured resides in this state but the owner is in another state.

Agency Response: TDI declines to make the suggested change. TDI denies that application of the unauthorized insurance prohibition creates a conflict of law. Insurance Code §1111A.003(q) states that the business of life settlements constitutes the business of insurance and §1111A.025 states that Chapter 101 is applicable to a person engaged in the business of life settlements. Section §101.051(b)(9) includes in the business of insurance, "doing or proposing to do any insurance business . . . in a manner designed to evade statutes relating to insurance. . . ." A transaction that is structured in a manner designed to evade the statute is deemed the business of insurance and may subject the actor to the sanctions available under Chapter 101. TDI acknowledges that there are good faith reasons why natural persons in Texas might domicile a trust to own a policy in a state other than Texas. The adopted section applies only to transactions structured with the purpose of evading Texas life settlement statutes, which will generally be shown when there is a pattern and practice by unlicensed individuals or entities of encouraging Texas residents to create out of state trusts without clear benefit.

Section 3.1728

Comment: One commenter requests that TDI include additional language in §3.1728(1) so that the paragraph reads, "receiving compensation for negotiating a life settlement contract that would result in the owner receiving less than either the cash surrender value or accelerated death benefit, if such accelerated death benefit may be claimed at the time the owner enters into

the life settlement contract, of the life insurance policy payable at the time of application for a life settlement contract." The commenter asserts that the current life settlement market is not focused on terminally ill insureds, but rather older age insureds, with life expectancies in excess of two years, who no longer need or can no longer afford their insurance policies. These policy owners are not able to claim an accelerated death benefit. The suggested language would add clarity to how the accelerated death benefit is determined for purposes of determining if a breach of a life settlement broker's fiduciary duty occurred. The commenter also suggests adding "and" between the first and second paragraphs.

Agency Response: TDI agrees to make the suggested change relating to the timing of the calculation of accelerated death benefit. TDI declines to add the word "and" because it is not necessary.

Sections 3.1730(a) and 3.1741(a)(5)

Comment: One commenter suggests inserting "licensed life settlement" before "provider" in §3.1730(a). The commenter asserts that the addition will remove ambiguity and clarify that the life settlement provider must be licensed by the state of Texas. Additionally, the commenter requests TDI amend the section so that an authorized representative of the policy owner who registers with the commissioner may contact an insured to determine the insured's health status or to verify the insured's address. The commenter asserts that in the tertiary settlement market the original life settlement broker or provider may no longer have a relationship with the new policy owner. In the tertiary market, many policies are serviced by professional servicing companies selected and authorized by the policy owners. The commenter asserts that requiring these entities to have formal written authorizations from each provider may be problematic and will increase costs. The regulatory scheme suggested would be subject to the supervision and control of the department, but would not otherwise need formal authorization from the providers.

Agency Response: TDI agrees to insert "licensed life settlement," but declines to make the other suggested changes. Only life settlement brokers, providers, and their authorized representatives are contemplated by Insurance Code §1111A.006(d)(5). In §1111A.012(13), the Legislature required notice be given to owners that, "the insured may be contacted by either the provider or broker or an authorized representative of the provider or broker. . . ." This disclosure would be meaningless if additional third parties in the tertiary market who are not licensed providers, brokers, or their representatives, could contact the insured. TDI does not have the statutory authority to require the registration of any other entity. Insurance Code §1111A.015 provides only for regulating the activities and relationships of providers, brokers, insurers, and their authorized representatives. The statute indicates a concern over the privacy of the insured, and it is not clear that a tertiary policy owner would share these privacy concerns. In order to effectively regulate the involved entities and to provide for consumer protection, TDI must have jurisdiction over entities tracking health status and making contact with insureds. However, the rule as adopted provides that any Texas licensed life settlement broker, provider, or their authorized representatives may verify health status. A subsequent policy owner is not required to utilize the services of the original parties to the life settlement contract. A tertiary policy owner may contract with any life settlement broker or provider.

Section 3.1740(b)

Comment: One commenter requests that TDI eliminate the types of forms listed in §3.1740(b)(4) - (10). The commenter asserts that Insurance Code §1111A.005 authorizes that only the life settlement contract and disclosure forms be filed and approved by the department. Authority to require verification of coverage comes from Insurance Code §1111A.014. The commenter asserts that no other forms may be required to be filed. Additionally, the commenter asserts that there is no justification for including premium finance loan documents in the rule.

Agency Response: TDI declines to make the suggested change. Insurance Code §1111A.005(a) states that, "a person may not use any form of life settlement contract in this state unless the form has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts." The forms required to be filed under the adopted rule effectuate the settlement of the policy. TDI has an interest in protecting consumers from inappropriate forms utilized in the purchase of life policies. Disclosures, escrow and trust agreements, documents used to obtain confidential information, consent forms, powers of attorney, premium finance, and other forms used to effectuate a life settlement are within the meaning of "any form of life settlement contract." These forms often assign rights or grant legal permission that can affect a policy owner or insured's privacy and legal rights. Review of such forms is not unique to life settlement forms. Life insurance companies submit forms to TDI that are similarly used to effectuate a contract. Insurance Code §1111A.005 expressly requires that the review and submission requirements of life settlement forms mirror that of life policies. Further, the definition of "life settlement contract" in §1111A.002(11) appears to contemplate the possibility of multiple documents making up the complete contract, and it explicitly includes premium finance loans entered into prior to the date of the issuance of the original policy under the definition of a life settlement contract.

Sections 3.1740(f)(3) and 3.1740(h)

Comment: One commenter requests that companies that have already filed their forms and have had them approved under the statute should not be required to resubmit forms.

Agency Response: TDI agrees, but declines to make any changes. The adopted rule requires forms to be filed with TDI only if they are not otherwise already compliant with these adopted rules. TDI anticipates that some forms that have already been reviewed will not require refiling. However, where provisions of this subchapter make a previous form noncompliant, refiling will be necessary. The department believes that it would be unfair and confusing to the market to have two different sets of form filing requirements resulting in differing standards in the life settlement contracts being issued to public with different provisions based on the filing date of the forms.

Section 3.1740(o)

Comment: One commenter states that the commissioner has no statutory authority to charge filing fees for form filings. The commenter asserts that neither Insurance Code §1111A.003 nor §1111A.015 authorizes the commissioner to charge fees for the filing of forms. The commenter reasons that there are no additional fees for life insurance agents to file additional forms required by the agent to obtain a license.

Agency Response: TDI agrees that additional fees should not be required to obtain a life settlement broker or provider license beyond what is specifically allowed by Insurance Code

§1111A.003(b). However, a person can obtain a license without having to file a life settlement contract form or other forms necessary to settle a life policy. The authority to require filing fees on forms is in Insurance Code §1111A.005. The filing procedures for life settlement forms must conform with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts. The form filing rules in this adoption are adapted from those in 28 TAC Chapter 3, Subchapter A, relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings. Further, it is possible for life settlement brokers to use and rely on forms already filed with and approved by TDI that were submitted by the life settlement provider the life settlement broker is negotiating the life settlement contract with. Additionally, Insurance Code §1111A presumes that some individuals may wish to become licensed as a life settlement broker to engage in some form of business, such as life expectancy estimating or health status verification, that do not require using approved forms. TDI declines to make the suggested change.

Section 3.1741(a)(1)

Comment: One commenter states that the entire contract provision in §3.1741(a)(1) should only include the life settlement contract and the application (including any amendments and attachments). The commenter asserts that the life insurance policy should not be part of what the provision requires. Another commenter suggests similar language that would strike the word "policy" and instead require a provision that the life settlement contract, or the life settlement contract and application and any documents, instruments, and agreements delivered pursuant to or in connection with the life settlement contract for the life settlement constitutes the entire contract between the parties. The entire contract provision should refer to the life settlement contract and not the policy.

Agency Response: TDI agrees that the term "policy" does not provide the most clarity with respect to the entire contract provision and has modified the rule text. The intent of the provision is to mirror similar entire contract provisions in life policies. TDI agrees that the entire contract provision should apply to the life settlement contract, or the life settlement contract and the application, so long as the meaning is specified in the life settlement contract. A change has been made to the paragraph so that it states, "a provision that the life settlement contract must provide that the contract or the contract together with the application, including any amendments and attachments, constitute the entire contract between the parties."

Section 3.1741(b)(1)

Comment: One commenter states that §3.1741(b)(1) should be struck entirely. The commenter asserts that indemnification should be encouraged, not discouraged. Indemnification can provide an antifraud measure in the contract which serves to put owners on notice that they need to make accurate representations regarding the policy. It would be unreasonable for the regulation to have an express provision that owners should not be held accountable for fraud or material misrepresentations. The commenter asserts that an indemnification provision would allow for protection in the marketplace against owners trying to deceive life settlement companies and investors in the transactions.

Agency Response: TDI declines to make the suggested change. TDI notes that the rule does not prohibit indemnification. The provision states that an indemnification clause cannot result in

indemnification that exceeds the proceeds of the life settlement contract received by the owner. TDI agrees that fraud is detrimental to the market, and the TDI fraud unit assists in the investigation of suspected criminal activity involving life settlement contracts.

Section 3.1741(c)

Comment: One commenter states that §3.1741 should be amended and restated to expressly provide that the life settlement providers are not acquiring any interest in additional death benefits for accidental death. The commenter also requests language stating that nothing in a life settlement contract shall require the life settlement provider or any subsequent owner to maintain accidental death benefits. The commenter states that many states prohibit the assignment of double indemnity provisions.

Agency Response: TDI agrees with the commenter that the assignment of accidental death benefits should be included in the life settlement contract. The proposed rule stated in §3.1741(c) that the additional death benefit for accidental death must remain payable to the beneficiary last named by the owner, not including the life settlement provider, or, in the absence of a beneficiary, to the estate of the owner. TDI declines to adopt the specific language the commenter suggests, but does amend §3.1741 so that proposed §3.1741(c)(2) is moved into its own subsection to clarify that accidental death benefits are a separate issue related to, but distinct from, retained ownership. Additionally, TDI adopts the clarifying language similar to that suggested by the commenter, to read, "Nothing contained here requires the life settlement provider or any subsequent owner of the policy to continue any accidental death benefits attached to the policy by rider or endorsement."

Comment: One commenter suggests that TDI amend and restate the retained ownership provision to state that no life settlement provider may enter into a life settlement contract that provides that the policy owner will retain an interest in the death benefit payable under the policy unless the life settlement contract form has been approved by the commissioner. The commenter asserts that life settlement transactions with retained benefits can be structured in a number of different ways, some of which are not contemplated or addressed by the proposed rule. By requiring the commissioner to approve any agreements, the department can ensure it will protect consumers' interests and effectively regulate the market.

Agency Response: TDI declines to make the suggested change. Retained ownership provisions do necessitate protracted review. TDI anticipates that it can provide this oversight during the review that forms are subject to, as required by §3.1740. Proposed §3.1741(c), redesignated as §3.1741(d), provides additional requirements to protect consumer interests and effectively regulate the market. It is impracticable for TDI to timely review each and every life settlement transaction that may feature a retained ownership provision. The commenter asserts that the potential exists for certain methods of structuring a retained ownership which may not be regulated by TDI. Without specific example, TDI is not able to assess this claim. If required, future rulemaking can address problems related to retained ownership provisions.

Section 3.1741(d)

Comment: One commenter requests that TDI strike §3.1741(d)(2) and not require a single section for defined terms in life settlement contracts. The commenter asserts that the provision is not necessary and that common practice is to define

terms throughout the contract. The commenter suggests that this requirement would necessitate an entire rewrite of many contracts in use in the life settlement market.

Agency Response: TDI declines to make the suggested change. The requirement to have a definition section does not preclude also providing the definitions in the body of the contract. TDI encourages such language where it enhances mutual understanding. However, providing a single source of definitions is a useful tool for consumers as technical terms might be used throughout a document, and defining them only the first time they are used may limit understanding of the document. Life settlement brokers and providers may include an attached listing of all defined terms without necessitating redrafting contracts anew.

Section 3.1741(j)

Comment: One commenter asserts that proposed §3.1741(j) introduces uncertainty into the market, because life settlement providers, investors, and insurance companies will have different views as to what questions in a verification request are relevant to a contract. Generally, verification of coverage forms already used are limited in practice and the information that an insurance company typically provides to policy owners.

Agency Response: TDI agrees with the commenter and has made clarifying changes to proposed §3.1741(j), now redesignated as subsection (k), to add a list of potential items that may be requested, including the policy owner, the cash surrender value, the availability of an accelerated death benefit provision, the premium, and mode of premium payment.

Section 3.1741(k)

Comment: Commenters assert that proposed §3.1741(k) should be struck from the rule. One commenter states that premium finance loans are irrelevant to life settlements and the provision does not fit into Insurance Code Chapter 1111A. The commenter asserts that life settlement brokers and providers cannot issue premium finance loans. One commenter states that premium finance is a business separate from life settlements and the purpose and intent of the section is not clear. The commenter notes that under §1111A.002(11), the act provides that certain premium finance loans are life settlement contracts. The rule text as proposed already addresses premium finance structures that are life settlement contracts at §3.1740.

Agency Response: TDI agrees to make the change. TDI expects that a premium finance loan that meets the definition of a life settlement contract to be filed with TDI as a life settlement contract. Further, meeting the requirements of this subchapter is not sufficient to offer a premium finance loan. Additional requirements for premium finance loans are found in Insurance Code Chapter 651.

Section 3.1743

Comment: One commenter requests that TDI revise §3.1743 to clarify that the accelerated death benefit is calculated based on the time the owner enters into the life settlement contract. This revision provides clarification as to the prohibition on settling a policy for less than the cash surrender value or the accelerated death benefit. The commenter asserts that the current life settlement market is not focused on terminally ill insureds, but rather older insureds, with life expectancies in excess of two years, who no longer need or can no longer afford their insurance policies. These policy owners are not able to claim an accelerated death benefit. The suggested language would add clarity to how the accelerated death benefit, if applicable, is determined for pur-

poses of determining whether breach of a life settlement broker's fiduciary duty occurred.

Agency Response: TDI agrees to make the suggested change. The section is revised to state, "A life settlement provider may not offer an owner a life settlement contract with a minimum value that is less than the cash surrender value or accelerated death benefit, if such accelerated death benefit may be claimed at the time the owner enters into the life settlement contract, of the life insurance policy payable at the time of application for a life settlement contract." This change is consistent with the revisions made to §3.1728.

Section 3.1744

Comment: One commenter requests that the advertising file and use requirement be eliminated from the adopted rule. The commenter asserts that it is a cumbersome requirement which is difficult for compliance. Further, the rule lacks specifics as to how it is to be done. The commenter compares the rule to the National Conference of Insurance Legislators' Life Settlement Model Act, under which providers and brokers could conduct advertising and would comply with rules promulgated by the commissioner, but would not be required to file advertising material with the commissioner. The commenter also compares the rule to the NAIC Viatical Settlement Act, which requires that a provider file advertising materials, as may be prescribed by regulation, with the commissioner, but does not require a broker to file promotional, advertising, and marketing materials.

Agency Response: TDI declines to make the suggested change. The statutory authority for requiring advertising to be filed with the commissioner is in Insurance Code §1111A. Section 1111A.005(d) grants the commissioner the authority to require the submission of advertisements to the department. Section 1111A.011 states that a broker's or provider's advertisement in this state must comply with all advertising and marketing laws under Chapter 541 and rules adopted by the commissioner that are applicable to life insurers or to license holders under Chapter 1111A. Both life settlement brokers and providers are license holders under Chapter 1111A. The former 28 TAC Chapter 3, Subchapter R, Viatical and Life Settlements rules, repealed with the adoption of this rule, also required the filing of advertising by both life settlement brokers and providers. Many life settlement brokers and providers are familiar with the advertising submission requirements of the repealed rules. In substance, the two rules do not differ. The section requires submission of advertisements in a file and use manner. The filing procedures are expressly the same as other advertising filing requirements adopted by TDI.

Comment: One commenter suggests that TDI change §3.1744(a) so the advertising or other solicitation materials the provision pertains to are limited to those marketed to owners of life policies. The commenter asserts that the limitation would make the section consistent with the scope of the statute, which is to regulate transactions in this state.

Agency Response: TDI agrees to make the suggested change. Section 3.1744(a) now reads, "Filing requirement. Each life settlement broker or provider must file with the department any advertisement or other solicitation materials used to market life settlement contracts or broker's or provider's services to owners in this state on or before the date such materials are disseminated. Advertising filings should be filed with the department at the address specified in §21.120 of this title (relating to Filing for Review)."

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For with changes: One individual, the Institutional Life Markets Association, and the Life Insurance Settlement Association.

DIVISION 1. GENERAL PROVISIONS

28 TAC §§3.1701 - 3.1703

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

§3.1702. Applicability and Scope.

This subchapter:

- (1) applies to all persons involved in the business of life settlements in this state as specified in Insurance Code Chapter 1111A;
- (2) does not regulate the actions of an investor providing money to a life settlement provider, and does not preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued under the law; and
- (3) becomes effective August 1, 2013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2013.
TRD-201302624



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

28 TAC §§3.1720 - 3.1730

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

§3.1720. *Forms.*

(a) Application form. The commissioner adopts by reference the License Application for a Life Settlement Provider or Broker form (revised April 2013) as the application for license for each person engaging in, or desiring to engage in, business as a life settlement broker or life settlement provider in this state.

(b) Renewal, Surrender, or Change of Information form. The commissioner adopts by reference the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form (revised April 2013) for the renewal, nonrenewal, or surrender

of life settlement broker or provider licenses and for use in providing notice to the department of a change to any license holder information or information in an application previously submitted to the department.

(c) Life Agent Notification form. The commissioner adopts by reference the Life Agent Notification to TDI to Act as a Life Settlement Broker form (revised March 2013) for use by a life insurance agent operating as a life settlement broker.

(d) Biographical Affidavit form. The commissioner adopts by reference the Biographical Affidavit for Life Settlement Providers or Brokers form (revised April 2013) for use as an attachment to the License Application for a Life Settlement Provider or Broker form and as an attachment to the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form, as applicable, for each owner, partner, director, officer, key management personnel, employee having authority to direct the management of the organization, and any person who has ownership of 10 percent or greater of the applicant or the applicant's stock.

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

§3.1721. *License Application; Fees.*

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

(b) License requirements.

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

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

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

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

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

its own legal name, a separate license to conduct business as a life settlement broker or provider in this state.

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

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

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

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

(1) either:

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

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

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

(A) history:

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

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

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

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

(B) management:

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

(ii) if the applicant is a subsidiary of a parent or holding company, an organizational chart showing the relationship between the parent and all affiliated entities. "Affiliate" and "subsidiary" have the meaning assigned by Insurance Code §823.003; and

(C) marketing plan:

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

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

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

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

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

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

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

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

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

(d) Application process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Renewal application requirements. In addition to the completed Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form, a license holder apply-

ing for renewal of a life settlement broker's license or provider's license must submit:

(1) if a business entity:

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

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

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

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

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

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

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

(e) Effect of renewal application.

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

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

(3) Expiration for more than 90 calendar days. If a life settlement broker or provider license has been expired for more than 90

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

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

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

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

§3.1723. *Course and Training Requirements for Brokers.*

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

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

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

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

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

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

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

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

(3) at least six hours on life insurance.

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

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

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

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

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

§3.1724. *Continuing Education Providers.*

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

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

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

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

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

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

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

- (1) Section 19.1015 of this title (relating to Failure to Comply); and
- (2) Section 19.1016 of this title (relating to Automatic Fines).

§3.1725. Life Insurance Agent Notification.

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

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

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

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

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

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

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

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

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

§3.1728. Life Settlement Broker Fiduciary Duty.

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

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

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

§3.1730. Health Status Verification.

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 3. FORM FILING AND USAGE REQUIREMENTS

28 TAC §§3.1740 - 3.1744

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

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

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

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

- (1) settlement contracts, including any amendments;

- (2) disclosures;
- (3) verification of coverage forms;
- (4) escrow or trust agreements;
- (5) documents used to obtain or release confidential information, including documents used by the life settlement broker or provider that in any way refer to, affect, request, or relate to a life settlement broker or provider obtaining or releasing confidential information;
- (6) owner consent forms;
- (7) power of attorney forms;
- (8) settlement applications;
- (9) premium finance loan documents as specified in Insurance Code §1111A.002(11)(B), unless exempted by §1111A.002(11-A); and
- (10) any other form used by a life settlement broker or provider to effectuate a life settlement contract in this state.

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

(d) **Transmittal checklist requirement.** The commissioner adopts by reference the Transmittal Checklist for Life/Health Rate and Form Filings (revised May 2013) to be filed with and attached to forms filed pursuant to subsection (c) of this section. The form may be obtained from the Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe St., Austin, Texas 78701, or by accessing the department's website at www.tdi.texas.gov/forms. The transmittal checklist must provide complete and accurate information about the filing, be signed by a duly authorized representative or attorney of the life settlement broker or provider, and include the following information:

- (1) the name and license number of the submitting life settlement broker or provider;
- (2) a designated contact person for the filing, including the individual's name, address, phone number, and, if available, fax number, and email address. If the form filing is submitted by anyone other than the life settlement broker or provider, the filing must include an attachment executed by the life settlement broker or provider, or by an officer of an entity, that designates the person submitting the filing as the contact for that filing;
- (3) a list of all submitted forms and an explanation of the purpose and use of each form;
- (4) if applicable, a list of the form numbers and approval dates of all previously reviewed forms with which the submitted form will be used and a statement explaining when the submitted form will be used;
- (5) a designation indicating the type of filing, as those types are described in subsection (h) of this section; and

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

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

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

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

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

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

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

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

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

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

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

(f) **Categories for form filings.**

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

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

(B) the department has not disapproved the form.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Correction to a pending form. A form containing corrections to a pending form submitted subsequent to the life settlement broker or provider receiving notification of the pending form's deficiencies from the department. This type of form filing requires the information and certifications specified in subsection (i)(1) and (5) of this section. The department must receive the filing no later than 30 days following the date the life settlement broker or provider receives written notification from the department of the form's deficiencies. The department will consider the originally submitted form withdrawn if it

does not receive a corrected form within 30 days following the date the notification of the form's deficiencies is sent. The department will not approve or review a withdrawn form until the broker or provider refiles it as a new form filing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (A) the form number of the pending form;
- (B) the name of the department's form review specialist who reviewed the form;
- (C) the date of notification of any form deficiencies;
- (D) the tracking number of the pending form assigned by the department;
- (E) a summary of the differences between the previously reviewed form and the corrected form, including a description of any deleted text. The corrected form must clearly identify all changes, with new or modified text underlined; and
- (F) a certification that the form contains no changes other than those identified.

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

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

- (A) a certification specified in paragraph (1) of this subsection, as well as the information and certifications specified in paragraph (5)(B), (D), (E), and (F) of this subsection;
- (B) the form number of the disapproved form; and
- (C) the date of disapproval by the department.

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

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

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

- (A) fails to comply with any applicable statutes or regulations of this state;
- (B) fails to meet any requirements of the Insurance Code, including §§1111A.011, 1111A.012, 1111A.014, and 1111A.023(b);
- (C) is unreasonable or contrary to the interests of the public; or
- (D) is otherwise misleading or unfair to the owner.

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

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

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

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

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

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

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

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

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

§3.1741. *Required Form Provisions.*

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

(1) a provision that the life settlement contract or the contract together with the application, including any amendments and attachments, constitute the entire contract between the parties;

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

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

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

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

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

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

(8) a provision disclosing that, if the policy that is the subject of the life settlement contract is a joint policy, or contains riders or other provisions insuring the lives of a spouse, dependents, or anyone

else other than the owner, there may be a possible loss of coverage, and that the owner should contact the owner's insurance company or agent to determine if the coverage may be converted to avoid losing the coverage.

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

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

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

(c) Accidental death benefits. The death benefit provision for accidental death contained within the policy must remain payable to the beneficiary last named by the owner or to the owner's estate. Nothing contained here requires the life settlement provider or any subsequent owner of the policy to continue any accidental death benefits attached to the policy by rider or endorsement.

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

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

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

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

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

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

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

(1) consistent terminology;

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

(3) the name of the owner and insured;

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

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

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

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

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

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

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

(2) the escrow or trust agreement must contain:

(A) the name of the owner;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) Verification of coverage. A verification request form must be limited to information relevant to the life settlement contract, including, if requested:

(1) the policy owner;

(2) the cash surrender value;

(3) the accelerated death benefit at that time; and

(4) the premium and mode of premium payment.

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

§3.1742. *Shopper's Guide.*

The commissioner adopts by reference the form Important Information You Should Know Before Entering Into A Life Settlement (revised April 2013), as a shopper's guide for delivery to owners during the solicitation process. The life settlement broker, or the provider if the transaction does not have a broker, must deliver the guide to the owner prior to the execution of the life settlement contract. The form is available from the Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe St., Austin, Texas 78701, or by accessing the department's website at www.tdi.texas.gov/forms. The delivery of the shopper's guide satisfies only the requirements of Insurance Code §1111A.012(10), and this section.

§3.1743. *Prohibited Life Settlements.*

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

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

(a) Filing requirement. Each life settlement broker or provider must file with the department any advertisement or other solicitation materials used to market life settlement contracts or broker's or

provider's services to owners in this state on or before the date such materials are disseminated. Advertising filings should be filed with the department at the address specified in §21.120 of this title (relating to Filing for Review).

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

This agency hereby certifies that the 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 June 24, 2013.

TRD-201302626

Sara Waitt

General Counsel

Texas Department of Insurance

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Proposal publication date: December 28, 2012

For further information, please call: (512) 463-6327



DIVISION 4. ANNUAL REPORTING

28 TAC §3.1760

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

§3.1760. Reporting Requirements.

(a) General reporting requirements applicable to all life settlement providers. All life settlement providers must comply with the general reporting requirements set forth in paragraphs (1) and (2) of this subsection.

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

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

(b) Report requirements. The commissioner adopts by reference the Life Settlement Provider Data Report form (revised March 2013), to be filed pursuant to subsection (a) of this section. The form is available from the Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe St., Austin, Texas 78701, or by accessing the department's website at www.tdi.texas.gov/forms. The report must include the following:

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

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

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

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

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

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

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

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

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

(d) 2011 and 2012 data. Notwithstanding the requirements of subsection (a) of this section, each life settlement provider must submit a report with the information required in this section within 60 days from the effective date of this rule for data regarding life settlement contracts entered during the period of January 1, 2011, to December 31, 2011, and January 1, 2012, to December 31, 2012, in Texas, for which the insured is a resident of Texas. A life settlement provider

that has already provided complete information required in subsection (b)(3)(A) - (D) of this section by the effective date of this section meets the requirements of this subsection.

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 June 24, 2013.

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Sara Waitt

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 297. WATER RIGHTS, SUBSTANTIVE

SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

30 TAC §297.1

The Texas Commission on Environmental Quality (TCEQ or commission) adopts an amendment to §297.1 *without change* to the proposed text as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 773) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

On June 21, 2012, Bickerstaff Heath Delgado Acosta LLP submitted a rulemaking petition on behalf of the City of Irving (Project Number 2012-034-PET-NR). In their petition, the City of Irving requested that the commission amend the definition of "Municipal use" in §297.1(32) to allow indirect reuse of treated wastewater effluent, referred to hereinafter as use of return flows, for watering of parks, golf courses, and parkways as a municipal use, after that use of return flows has been authorized by the commission. At the TCEQ's agenda on August 8, 2012, the commission approved the initiation of a rulemaking based on this petition.

As requested in the petition, the commission adopts an amendment to the definition of "Municipal use" to add a reference to the use of return flows in addition to reclaimed water for the uses authorized by the existing rule. The commission also expands the authorized uses to include watering of other public or recreational spaces and adopts a reference to Texas Water Code (TWC), §11.042, since authorizations for the use of return flows are issued by the commission under this statute.

Section Discussion

§297.1, Definitions

The existing definition of "Municipal use" in §297.1(32) allows for the use of reclaimed water in lieu of potable water for domestic,

recreational, commercial, or industrial purposes or for the watering of golf courses, parks, and parkways. The commission adopts an amendment to §297.1(32) to change the definition of municipal use to add watering of "other public or recreational spaces" to the list of authorized water uses and to allow use of return flows authorized pursuant to TWC, §11.042, for all of those uses. Other public or recreational spaces could include areas such as athletic fields, neighborhood common areas, and other spaces within a community or municipality and its environs with public uses. The definition of reclaimed water in §297.1(39) requires that its quality be suitable for its intended use. Similarly, adopted §297.1(32)(C) includes language to ensure that any return flows diverted under this rule that are intended for human consumption as defined in §290.38(32) are of suitable quality for their intended use.

Under a revised definition of municipal use, certain water needs could be satisfied by non-potable return flows, preserving potable supplies for human consumption. Additionally, municipal water right holders could gain the flexibility to use permitted return flows for public purposes without the expense of treating the water to make it potable or the expense of amending existing permits for the use of return flows to add irrigation use. The use of return flows is a water planning strategy being explored by many municipal water right holders to stretch existing supplies. The change adopted in this rule could help enable municipal water right holders to implement that strategy. To accommodate these changes, the commission also adopts the re-lettered and re-numbered rule language. The commission adopts the amendment based on a petition for rulemaking.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225. "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.

First, the adopted rulemaking does not meet the statutory definition of a "major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to expand the definition of municipal use to include the use of return flows for certain purposes.

Second, the adopted rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted rule would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rule would be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendment will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. The commission did not receive any comment relating to the draft regulatory impact analysis.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The commission adopted the rule for the specific purpose of clarifying that use of return flows for purposes already identified in the existing definition qualifies as municipal use. In all instances, a municipality operating under this rule amendment will be exercising control over property already belonging to it pursuant to an authorization to use return flows issued by the TCEQ.

A "taking" under Texas Government Code, Chapter 2007 means a governmental action that affects private real property in a manner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%.

Because no taking of private real property will occur by amending the definitions as adopted, the commission has determined that promulgation and enforcement of the adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the adopted rule neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the rule. Therefore, the adopted rule would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rule, 31 TAC §505.11(b)(4), relating to Actions and Rules Subject to the Coastal Management Program, and will, therefore, require that the goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is administrative in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission did not receive any comments regarding the consistency with the coastal management program.

Public Comment

The commission held a public hearing on March 12, 2013. The comment period closed on March 18, 2013. The commission received comments from the City of Irving, represented by Bickerstaff Heath Delgado Acosta LLP, and the Lower Colorado River Authority (LCRA).

The City of Irving supported the rule as proposed. LCRA suggested changes to the rule as discussed in the Response to Comments section of this preamble.

Response to Comments

The City of Irving commented that it supported the rule as proposed.

The commission acknowledges this comment.

LCRA expressed concerns that the rule may create ambiguities in water supply contracts for municipal use that have relied on the existing definition of "municipal use" in the commission's rules and its inherent limitations to establish contract price and quantity. LCRA commented that it appeared that the proposed change in the rule has the potential to provide benefit to the buyer at the seller's expense.

The commission responds that the rule change does not materially expand the definition of municipal use to include uses not already authorized under the definition for the use of water for municipal purposes. The adopted rule change will not affect any entity other than those that already have an authorization under TWC, §11.042, for the use of wastewater effluent return flows for municipal purposes. Rather, the rule allows a water user who already holds an authorization to use return flows under TWC, §11.042, for municipal purposes to continue to do so pursuant to active authorizations under both TWC, §11.042, and 30 TAC Chapter 210. If an entity with a TWC, §11.042 authorization for municipal use water chooses to contract for the sale of that water to a different user, the terms of such a contract are private agreements which are not subject to the provisions of this rule change. No change has been made in response to this comment.

LCRA suggested that for municipal use that does not rely on an underlying water contract a water rights amendment to add agricultural use would appear to achieve the same result in a straightforward yet transparent process and not require this rule change.

The commission responds that the petition to initiate this rule change was considered at a public meeting. The commission ordered that the rule be published and made available for public participation. Notwithstanding any potential alternative permitting procedures, this rule change is appropriate and necessary for the administration of authorizations under TWC, §11.042, for municipal use generally in that it will enable more efficient use of water for municipal purposes. No change has been made in response to this comment.

LCRA expressed concern that the proposed rule change may not promote the most beneficial use of water during exceptional droughts. LCRA commented that when read in conjunction with the commission's rules for implementing suspension of water rights during drought and the commission's rules regarding drought contingency plans, there could be a circumstance where a municipality with a junior water right that authorizes indirect municipal use would be allowed to continue landscape irrigation in spite of a senior priority call under a water right for agricultural use that has historically relied on such return flows to grow crops.

Priority status of return flows is addressed in the underlying permit for the use of those return flows. Depending on the terms of each individual authorization under TWC, §11.042, water used under the authorization may or may not be subject to senior priority calls. This rule change does not impact the time priority of any authorization under TWC, §11.042, relative to other water rights in a river basin. No change has been made in response to this comment.

LCRA commented that it is not clear that reuse (direct or indirect) results in an offsetting reduction in demand on the state's water supplies, which is of particular concern in severe drought.

The commission acknowledges this comment and responds that the rule change is not intended to encourage or discourage use of return flows, but rather to clarify that water authorized for use

of return flows under TWC, §11.042, for municipal purposes is subject to the same authorizations and limitations that apply to all use of water for municipal purposes. No change has been made in response to this comment.

LCRA commented that the rule should provide that in response to any downstream senior priority calls, a municipality implementing indirect reuse under the rule change should be required by the commission to demonstrate that such use is critical to meet a human health and safety need in order to continue the diversion under their junior rights.

The commission responds that whether use of return flows is subject to senior priority calls is dependent on the terms of each individual authorization to use return flows under TWC, §11.042. Authorizations to use return flows under TWC, §11.042, that are subject to senior priority calls are subject to the requirements of 30 TAC Chapter 36 which already outlines procedures under which municipal water use is managed for human health and safety needs during times of shortage. No change has been made in response to this comment.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule.

The adopted rule implements TWC, §§5.102, 5.103, and 5.105.

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 June 21, 2013.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2548



CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

SUBCHAPTER C. GENERAL LICENSING REQUIREMENTS

30 TAC §336.227

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts new §336.227 *without change* to the proposed text as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 779) and will not be republished.

Background and Summary of the Factual Basis for the Proposed Rule

The commission adopts this rule to establish an exemption from the TCEQ low-level radioactive waste (LLRW) licensing requirements for the disposal of certain radioactive tracers used in the

exploration, development or production of oil and gas resources. On October 8, 2012, the executive director received a Petition for Rulemaking request from Baker Botts L.L.P., on behalf of ProTechnics Division of Core Laboratories LP. ProTechnics provides oil and gas diagnostic services to well operators to optimize reservoir performance and maximize hydrocarbon recovery from producing fields. These services include the use of radioactive tracers that are introduced into hydraulic fracturing fluids that enable well operators to take well log measurements to identify the intervals where the fluids are placed. ProTechnic's petition requested that the commission establish an exemption in rule for the disposal of the radioactive tracers used in the hydraulic fracturing operations. After considering the petition on December 5, 2012, the commission directed the executive director to initiate this rulemaking.

Occasionally, the fracking fluids and tracer material can be released back out of the well during a "sandout" and is returned to the surface. The Texas Department of State Health Services (DSHS) and the Railroad Commission of Texas (RRC) have authorized the disposal of the returned material in earthen pits at the well site or in a Class II injection well. The DSHS granted this exemption under Texas Health and Safety Code (THSC), §406.106(a) through the radioactive material license issued by DSHS to authorize the use of radioactive tracers for disposal in the earthen pits and in 25 TAC §289.253(u)(3) for disposal in a Class II injection well. Both of these exemptions have also been granted on the radioactive material licenses issued by the Nuclear Regulatory Commission (NRC). In 2007, Senate Bill 1604 of the 80th Legislature conferred TCEQ with the authority to exempt a source of radiation from the licensing requirements under the TCEQ's jurisdiction. Because the commission has jurisdiction over the disposal of radioactive substances in THSC, §401.011(b)(1), the authority to exempt radioactive substances from disposal requirements in THSC, §401.106(a) rests with the commission.

An analysis by DSHS and the NRC determined that the disposal of the radioactive tracers would not result in a significant risk to public health and safety or to the environment. The radioactive tracers have a half-life of less than 120 days and are in a form that will not leach into and migrate with the groundwater. The on-site disposal pits must be covered with at least two feet of clean soil. The commission has reviewed various pit disposal dose models, including worst-case-scenarios that show that the total effective dose equivalent to individual members of the public from the closed pit is well below the 0.1 rem per year dose limit. Class II injection wells are permitted by the RRC after a determination that groundwater and surface water are protected from pollution. According to the petition, the disposal of radioactive tracers in earthen pits has occurred without any reported or known harm to public health and safety or the environment since May 12, 1992. The commission agrees with the determinations of both the DSHS and the NRC and finds that the proposed exemption for the on-site pit disposal and Class II injection well disposal of the tracers will not constitute a significant risk to the public health and safety and the environment.

Section Discussion

The commission adopts new §336.227 to exempt radioactive tracers from the radioactive licensing and disposal rules in Chapter 336 if the waste meets the criteria specified in §336.227(b): 1) the possession, transportation, and use of the radioactive tracers are licensed or otherwise authorized by the DSHS; 2) the tracers are in fluids that have been retrieved from a well that is

used in the exploration, development, or production of oil, gas, or geothermal resources and the well is authorized by the RRC; 3) total concentration of radioactivity for all isotopes does not exceed 1,000 picocuries per gram (pCi/g) and the half-life of each isotope is 120 days or less; and 4) the radioactive tracers are non-water soluble.

Section 336.227(c) authorizes the disposal of qualifying radioactive tracer material in an on-site shallow earthen pit that is permitted by the RRC for the disposal of oil and gas waste with at least two feet of clean soil or by §336.227(d) in a Class II injection well permitted by the RRC if the permit specifically authorizes disposal of radioactive tracers.

Section 336.227(e) requires any person who disposes of radioactive tracers under this rule to maintain records related to the disposal.

Final Draft Regulatory Impact Analysis Determination

The commission adopts the rulemaking under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rule is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the adopted rule exempts from TCEQ licensing requirements disposal of certain radioactive materials, whose possession, use and transportation are authorized by the DSHS and whose disposal is authorized by the RRC as oil and gas waste. The commission adopted this rule to exempt minimal amounts of DSHS licensed radioactive tracers used in the exploration, development or production of oil and gas resources from the TCEQ low-level radioactive licensing and disposal requirements. In order to exempt these radioactive materials the commission finds that the exemption will not constitute a significant risk to the public health and safety and the environment. Radioactive tracers that are not eligible for an exemption would have to be disposed of as LLRW.

Furthermore, the adopted rule does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted rule does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor adopt a rule solely under the general powers of the agency.

THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive material in Texas. THSC, §401.106(a) authorizes the commission to adopt rules to exempt

a source of radiation from the licensing requirements of the Texas Radiation Control Act if the commission finds that the exemption of the source of radiation will not constitute a significant risk to the public health and safety and the environment. In addition, the State of Texas is an "Agreement State," authorized by the NRC to administer a radiation control program under the Atomic Energy Act. The adopted rule does not exceed a standard set by federal law. The adopted rule implements an exemption that is consistent with exemptions approved by the NRC for the disposal of radioactive tracers.

The adopted rule does not exceed an express requirement of state law. THSC, Chapter 401 establishes general requirements for the licensing and disposal of radioactive materials. THSC, §401.106 specially authorizes the commission to exempt a source of radiation from the requirements to obtain a license for disposal.

The commission has also determined that the adopted rule does not exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC's requirements for the regulation of radioactive materials and is adequate to protect health and safety. The commission determined that the adopted rule does not exceed the NRC's requirements nor exceed the requirements for retaining status as an "Agreement State."

The commission also determined that these rules are adopted under specific authority of THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.106 authorize the commission to adopt rules for the control of sources or radiation and the licensing and exemption of the disposal of radioactive materials.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received regarding the draft regulatory impact analysis.

Takings Impact Assessment

The commission evaluated the adopted rule and performed a preliminary assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment is that implementation of the adopted rule would not constitute a taking of real property. The purpose of the adopted rule is to exempt minimal amounts of DSHS-licensed radioactive tracers used in the exploration, development or production of oil and gas resources from the TCEQ low-level radioactive licensing and disposal requirements. The adopted rule would substantially advance this purpose by implementing new provisions in rule to establish the requirements for eligibility of the exemption. To qualify for the exemption, the use, possession and transportation of the radioactive material must be authorized by the DSHS and the disposal of the oil and gas waste must be authorized by the RRC. No requirements are imposed by the commission in the adopted rule that would constitute a taking of real property.

Promulgation and enforcement of the adopted rule would be neither a statutory nor a constitutional taking of private real property. The adopted rule does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit, the owner's right to property and

reduce its value by 25% or more beyond which would otherwise exist in the absence of the rule. The adopted rule establishes an exemption from commission licensing and disposal for certain activities authorized by the DSHS and the RRC.

Consistency with the Coastal Management Program

The commission reviewed this adopted rule and determined that the adopted rule is neither identified in, nor will it affect, any action/authorization identified in Coastal Coordination Act Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP). Therefore, the adopted rule is not subject to the CMP.

Public Comment

The commission held a public hearing on March 5, 2013. The commission did not receive any comments at the public hearing. The comment period closed on March 18, 2013. The commission received written comments from an individual and Baker Botts L.L.P, on behalf of ProTechnics. Both comments supported the rulemaking and one of the comments recommended changes to the rule and had questions on the implementation of the rule. After the close of the comment period, the TCEQ received a letter from the NRC stating that the NRC reviewed the proposed rule for federal compatibility and health and safety requirements, and as a result of the review, had no comments on the commission's proposed rule.

Response to Comments

The individual asked how does this rule compare to the Decay in Storage rule in §336.211(a)(3).

The Decay in Storage rule in §336.211(a)(3) authorizes a licensee to store waste containing radionuclides which have a short half-life for a period typically equal to ten times the half-life value until the waste is no longer considered radioactive and can then be disposed of as non-radioactive waste. This rulemaking would authorize the disposal of radionuclides which have a short half-life, are in an insoluble form, and are used for licensed radioactive tracer studies without the requirement of storing the waste for a period of time for the radioactivity to decay to insignificant levels. Under this rulemaking, the exempted tracers may only be disposed in disposal pits or Class II injection wells that are permitted by the RRC.

The individual asked what specific isotopes are included in the 1,000 pCi/g limit in the proposed §336.227(b)(3) and stated that these isotopes should be identified in the rule. The individual also asked if daughter isotopes will be included in the 1,000 pCi/g limit for radioactive tracers. ProTechnics commented that it is unnecessary for TCEQ to add details regarding specific isotopes and daughter isotopes in the rule, and that the record-keeping requirement includes information on the types of isotopes and concentrations. ProTechnics commented that the rule's half-life limitation and the recordkeeping requirements strike an appropriate balance of specifying which types of isotopes can be used while allowing for flexibility for additional isotopes to be included under the rule.

The specific isotopes included in the 1,000 pCi/g limit are those used as radioactive tracers as authorized and identified on the radioactive material licenses issued by DSHS. The commission respectfully disagrees that the specific isotopes be identified in the rule since these isotopes are identified on the DSHS license and have a negligible effect on the environment or public health when used as tracers and consequently also when disposed in an earthen pit or a Class II injection well. The isotopes named in

the petition were iridium-192, scandium-46, and antimony-124. But any other isotope with a half-life of 120 days or less used as a radioactive tracer could qualify under the exemption if all of the other criteria for the exemption are met. If a radioactive tracer has a radioactive daughter, the activity of the daughter would be considered as part of the 1,000 pCi/g limit since the limit is for the total concentration of radioactivity of the tracer material.

The individual asked how the concentration values would be determined (laboratory analysis or process knowledge) and with what precision. The individual stated a preference for laboratory measurement and asked if there are any National Environmental Laboratory Accreditation Conference (NELAC) certified methods for these measurements. The individual also stated that the typical assumptions should be stated if process knowledge is to be used to determine the concentration. ProTechnics commented that it is unnecessary for TCEQ to add details on how the radioactive concentrations will be measured.

The commission respectfully disagrees that the methodology for how the concentration values are determined needs to be codified in the regulations. Process knowledge, field measurements, and laboratory analysis are all suitable tools that could be used to determine that the radioactive tracers do not exceed the 1,000 pCi/g limit. The commission considers that the person disposing the exempted material is best-suited and responsible for determining the method for assuring that the exempted tracers do not exceed the 1,000 pCi/g concentration limit. Similarly, the person disposing the exempted material should determine the level of precision needed for any measurements. The person disposing the exempted material must maintain records relating to the disposal including the estimated volume of the radioactive tracers and the total concentration of radioactivity for the isotopes disposed. The executive director may request and review those records at any time.

The individual asked at what time the waste will be sampled to determine the concentration values to verify that it does not exceed the 1,000 pCi/g limit. ProTechnics commented that it is unnecessary for TCEQ to add details on when radioactive concentrations will be measured.

The waste cannot exceed 1,000 pCi/g when it is disposed, which is defined in §336.2(36) as the isolation or removal of the waste from mankind and mankind's environment without intent to retrieve the waste later. From this definition, the 1,000 pCi/g limit would apply when the waste is placed in the pit or when it is injected into the well. The waste can be assessed, sampled or analyzed prior to disposal. If it does not exceed 1,000 pCi/g prior to disposal, it will not exceed 1,000 pCi/g when disposed. When the radioactive tracers are measured to determine the activity value does not need to be codified in the rule.

The individual asked whether there is concern about interference from naturally occurring radioactive material (NORM).

Radioactive tracers have been used for over 20 years and the tracer users have developed methods to distinguish the tracers from NORM. The tracers utilized are not naturally occurring so they can be distinguished from NORM and should not be present in the background radioactivity of the soil or groundwater. Therefore, the commission is not concerned about NORM interfering with the measurement of tracer concentration values.

The individual commented on whether it would be appropriate to tie this rulemaking with the licensee's isotope inventory requirement to verify the accounting of all the radioactive material. ProTechnics commented that any tie-in to a licensee's isotope in-

ventory requirement would be unmanageable and burdensome and that recordkeeping requirements related to tracer volume is sufficient.

The possession, transportation, and use of radioactive tracers must be authorized by the DSHS. The commission does not believe it would be appropriate to tie this rulemaking to the isotope inventory on a DSHS license. Radionuclides with a short half-life and in an insoluble form are used in the studies because not all of the radioactive tracers will be recovered. Therefore, it would not be feasible to verify the accounting of all of the radioactive material.

Statutory Authority

The new rule is adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.106, which authorizes the commission to adopt rules to exempt a source of radiation from the licensing requirements provided by the Texas Radiation Control Act. The adopted new rule is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the water code and other laws of the state.

The adopted new rule implements THSC, Chapter 401, relating to Radioactive Materials and Other Sources of Radiation, including §401.011, relating to Radiation Control Agency; §401.051, relating to Adoption of Rules and Guidelines; §401.057, relating to Records; §401.103, relating to Rules and Guidelines for Licensing and Registration; §401.104, relating to Licensing and Registration Rules; §401.106, relating to Exemption from Licensing Requirements; and §401.412, relating to Commission Licensing Authority.

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 June 21, 2013.

TRD-201302597

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2141



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 354. MEMORANDA OF UNDERSTANDING

31 TAC §354.1

The Texas Water Development Board (TWDB) adopts the repeal of §354.1, concerning a Memorandum of Understanding (MOU) between the Texas Water Development Board (TWDB) and the Texas Historical Commission (THC). The repeal is adopted without changes to the proposal as published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2742).

DISCUSSION OF THE ADOPTED REPEAL

This repeal is adopted because a new §354.1 is adopted elsewhere in this issue of the *Texas Register*. The TWDB determined that due to the extensive reorganization of §354.1, repeal of the entire section is more efficient than to propose and adopt amendments for the changes. The revision of §354.1 results from review and changes negotiated by the TWDB and the THC relating to procedures for compliance with state historic preservation statutes.

PUBLIC COMMENTS

No public comments were received on the proposed repeal of §354.1.

STATUTORY AUTHORITY

The repeal is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State.

This 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 June 20, 2013.

TRD-201302589

Kenneth L. Petersen

General Counsel

Texas Water Development Board

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Proposal publication date: May 3, 2013

For further information, please call: (512) 463-8061



31 TAC §354.1

The Texas Water Development Board (TWDB) adopts new §354.1, concerning Memorandum of Understanding (MOU) between the Texas Water Development Board and Texas Historical Commission (THC), with changes to the proposed text as published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2743).

DISCUSSION OF THE ADOPTED RULE

This new §354.1 replaces the current §354.1 in its entirety. Current §354.1 is being repealed separately in this issue of the *Texas Register*. New §354.1 revises the responsibilities of the parties and reorganizes the contents of the memorandum of understanding to make clear those responsibilities. The revision of §354.1 results from review and changes negotiated by the TWDB and the THC relating to procedures for compliance with state historic preservation statutes.

The MOU provides for the conduct of archeological surveys under Texas Antiquities Permits, conditions on release of funds related to disposition of archeological and historic resources following commission review, and conditions for treatment of archeological and historic resources discovered during project construction. Section 354.1 is based on Texas Natural Resources Code §191.174, which directs all state agencies and political subdivisions to cooperate and assist the THC in carrying out the intent of the Texas Antiquities Code, and Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board, and §6.104, which authorizes the board to enter into a memorandum of understanding with any other state agency and requires adoption by rule of any memorandum of understanding.

PUBLIC COMMENTS

THC provided comments based on the version of the MOU adopted by THC as 13 TAC §26.26 in the May 17, 2013, issue of the *Texas Register* (38 TexReg 2980) to be effective May 20, 2013. THC suggested changing the order in the list of terms in subsection (a)(1) and (6) from "all types of archeological sites, historic buildings, historic structures and cemeteries" to "all types of archeological sites, historic structures, historic buildings, and cemeteries." TWDB adopts the change as non-substantive for consistency with the THC rule.

In addition, THC suggested changing the phrase "or cemeteries" in subsection (a)(6) to "and cemeteries" to conform with (a)(1). The TWDB adopts the change as suggested.

THC also noted that an article "the" was omitted from subsection (b)(1) in referring to the "proposed project scope." The TWDB adopts the change as a non-substantive change providing consistency with the THC rule.

TWDB received no other comments.

STATUTORY AUTHORITY

The new rule is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State.

This rulemaking affects Texas Water Code, Chapters 6, 15, and 17.

§354.1. *Memorandum of Understanding with Texas Historical Commission.*

(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, historic buildings, 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, historic buildings, and cemeteries for all projects to be constructed with financial assistance from the TWDB.

(b) Pre-construction Phase Responsibilities. In compliance with 13 TAC Chapter 26, 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 the 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 13 TAC §26.7 (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.

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 June 20, 2013.

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Texas Water Development Board

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For further information, please call: (512) 463-8061

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**PART 17. TEXAS STATE SOIL AND
WATER CONSERVATION BOARD**

**CHAPTER 523. AGRICULTURAL AND
SILVICULTURAL WATER QUALITY
MANAGEMENT**

31 TAC §§523.1 - 523.3, 523.6, 523.7

The Texas State Soil and Water Conservation Board (State Board or agency) adopts amendments to §§523.1 - 523.3 and §523.6; and new §523.7, concerning Agricultural and Silvicultural Water Quality Management, without changes to the proposed text as published in the March 29, 2013, issue of the *Texas Register* (38 TexReg 2076).

The rules in Chapter 523 pertain to the abatement of agricultural and silvicultural nonpoint source pollution under the authority of the State Board. Chapter 523 includes the State Board's scope and jurisdiction (§523.1), as well as the process by which the State Board identifies problem areas related to agricultural and silvicultural nonpoint source pollution (§523.2). This chapter includes the administrative and technical procedures of the Water Quality Management Plan Certification Program (§523.3) and the associated cost-sharing function of soil and water conserva-

tion land improvement measures (§523.6). Chapter 523 includes a section pertaining to incentives for composting animal manures (§523.7). Section 523.7 is adopted for repeal in this issue of the *Texas Register* because the Dairy Manure Export Support Program no longer exists. Chapter 523 also includes a section pertaining to comprehensive nutrient management planning in the North Bosque River (§523.8). Section 523.4 pertaining to the resolution of complaints and §523.5 pertaining to the memorandum of understanding between the State Board and the Texas Commission on Environmental Quality are contained within this chapter but are not affected by this rulemaking adoption.

As a result of the most recent review of the agency by the Texas Sunset Advisory Commission and the corresponding enactment of House Bill 1808 by the 82nd Legislature, the State Board seeks to implement newly required management recommendations and statutory requirements for the Water Quality Management Plan Program. House Bill 1808 requires the State Board to: (1) develop goals for the program including desired program results and descriptions of program beneficiaries; (2) establish statewide evaluation criteria to document grantee compliance with grant conditions; (3) monitor compliance with the evaluation criteria by gathering, maintaining, and analyzing comprehensive data on grant program activities; and (4) analyze the extent to which grant programs achieve the goals using either empirical or nonempirical evidence. Incentive cost-share payments made to program participants in accordance with §523.6 are considered grants. The Sunset Advisory Commission's Final Report to the Texas Legislature also included a recommendation to agency management that a stakeholder process be used to develop grant goals and performance measures and to routinely use grant results to improve the Program.

Additionally, the State Board seeks to update the Program's priority areas for the control of nonpoint source pollution as required by §201.026(l), Agriculture Code. Section 201.026(g), Agriculture Code requires that the Program be implemented in areas that the State Board has identified as having or having the potential to develop agricultural or silvicultural nonpoint source water quality problems, or in an area within the "coastal zone" designated by the commissioner of the General Land Office. The State Board is required to consider: (1) bodies of water the Texas Commission on Environmental Quality has identified as impaired through the state water quality assessment process; (2) threatened areas in which action is necessary to prevent nonpoint source pollution; and (3) other areas of concern, including groundwater. Section 201.303(d)(1), Agriculture Code, which pertains to the allocation of cost-share funding for the Program, requires the State Board to give greater weight among the priorities identified under §201.026(g) of the Agriculture Code.

In an effort to balance the implementation of the new requirements with existing statutes, the State Board adopts amendments that specify a stakeholder process will be used to select cost-share incentive priorities, goals, and performance measures for the Program and that create an alternative mechanism whereby cost-share funds may be allocated to priority concerns rather than specific soil and water conservation districts. The alternative mechanism does not preclude the State Board from directly allocating cost-share funds to a soil and water conservation district. There are also numerous other amendments adopted that are intended to improve clarification of the rules as well.

Section 523.1(a)(1) is amended to clarify that there may be additional sources of nonpoint source pollution that are not explicitly listed in rule.

Section 523.1(a)(1)(B) is amended to clarify that animal feeding operations are considered nonpoint sources in their entirety, as opposed to specific portions or activities that they may be engaged in conducting.

Section 523.1(b)(2) is amended to clarify that the State Board may utilize general revenue from the state in addition to federal funds provided by §319(h) of the Federal Clean Water Act for certain activities and that those funds may be used for research purposes.

Section 523.2(c) is amended to clarify that the resources referenced in this section would be allocated toward the programs listed in §523.1(b)(1) - (4).

Section 523.2(c)(1) - (3) is amended to remove the terms "first, second, and third" from the beginning of each paragraph to clarify that the three considerations are not presented in a ranked order of importance.

Section 523.3(b)(7)(C) is amended by replacing the term "designated" with "devised" as it more accurately describes the process.

Section 523.3(b)(7)(D) is amended to provide additional clarity to the definition without modifying the meaning of the definition.

Section 523.3(b)(12) is amended to replace the term "audit" with "assessment" because it more accurately describes the process and to specify that a status review also assesses compliance with a water quality management plan conservation plan of operations.

Section 523.3(c)(1) is amended to include language currently codified at §523.3(g)(2) because it is more applicable to certification rather than practice standards.

Section 523.3(d) is amended to clarify that recertification is necessary for certain specific modifications to a water quality management plan.

Section 523.3(e) is amended to clarify that the subsequent section is applicable to the modification of a water quality management plan in addition to the initial receipt of one.

Section 523.3(e)(4) is amended to clarify that all of the conditions at §523.3(c) relating to certification would need to be met, not exclusively the provision relating to water quality standards, prior to certification being made.

Section 523.3(g)(2) is amended by deleting language relating to the technical planning threshold required for certification from this section. This language is moved to §523.3(c)(1).

Section 523.3(j)(3)(A)(vi) is amended to clarify that the "notice of violation" referenced in the section is meant to refer to one issued by the Texas Commission on Environmental Quality.

The title of §523.6, "Cost-Share Assistance for Soil and Water Conservation Land Improvement Measures," is amended to clarify that "cost-share" assistance is funding and that it is intended to serve as an incentive for participation. This amendment is present in numerous places throughout the remainder of the section and is made for the same clarifying purpose.

Section 523.6(a) is amended to clarify that cost-share incentive funding is only available when used toward the implementation of a water quality management plan certified by the State Board.

In §523.6(b)(1), the definition of "allocated funds" is amended to include funds allocated to a cost-share incentive priority as well as funds directly allocated by the State Board to a soil and water conservation district. Additionally, this amended section specifies that the latter would be referred to as a "direct allocation."

Proposed new §523.6(b)(6) provides a definition for "cost-share incentive priority." The remaining paragraphs in subsection (b) are renumbered.

In §523.6(b)(11) (renumbered as §523.6(b)(12)), the definition of "maintenance agreement" is amended. The amendment clarifies that it is intended to serve as the written agreement between the parties that documents the participant's commitment to implement and maintain the water quality management plan, and the conservation practices within the plan, regardless of whether cost-share incentive funding is provided toward such implementation, or the State Board will remove certification of the plan. If certification is removed, the agreement requires that any practices installed with the assistance of cost-share incentive funding must be maintained by the participant for the life expectancy of the practice even though the water quality management plan is no longer certified. Failing to maintain cost-shared practices for the life expectancy may result in the requirement that all or a prorated portion of the funding be returned to the State Board.

In §523.6(b)(12) (renumbered as §523.6(b)(13)), the definition of "obligated funds" is amended to include those from a cost-share incentive priority.

In §523.6(b)(13) (renumbered as §523.6(b)(14)), the definition of "operating unit" is amended to be consistent with the same definition as adopted in §523.3(b)(7)(C).

Section 523.6(b)(13)(D) (renumbered as §523.6(b)(14)(D)) is amended to include language clarifying the intended meaning of the definition relating to a change in ownership.

Proposed new §523.6(c), concerning Stakeholder Process, is added to require that the State Board use a stakeholder process to implement goals and performance measures. The remaining subsections are relettered.

Section 523.6(c)(1)(A) (relettered as §523.6(d)(1)(A)) is amended to specify that the established procedures would include those necessary to allocate funds to a cost-share incentive priority as well as directly to a soil and water conservation district.

Section 523.6(c)(1)(D) (relettered as §523.6(d)(1)(D)) is amended to clarify that the minimum and maximum amounts of cost-share incentive funding the State Board establishes for an eligible person in a year is intended to be in a "program year," not year in the most general definition. This amendment clarifies that an eligible person could receive more than those amounts during a single calendar year, cumulatively, so long as the amounts from each program year, as defined, do not exceed the amounts established by the State Board for those respective program years.

Proposed new §523.6(d)(1)(E) is added to specify that the State Board shall provide verification to a soil and water conservation district as to whether an application would or would not qualify for a particular cost-share incentive priority. The remaining subparagraphs in subsection (d)(1) are relettered.

Section 523.6(c)(1)(F) (relettered as §523.6(d)(1)(G)) is amended to specify that the reports soil and water conservation

districts submit to the State Board will only pertain to direct allocations.

Section 523.6(c)(1)(G) (relettered as §523.6(d)(1)(H)) is amended to specify that the requests for reallocated funds from participating soil and water conservation districts pertain to direct allocations.

Section 523.6(c)(2)(B) (relettered as §523.6(d)(2)(B)) is amended to specify that the district would administer the cost-share funds allocated under a direct allocation.

Section 523.6(c)(2)(C) (relettered as §523.6(d)(2)(C)) is amended to specify that the establishment of a priority system applies to direct allocations and cost-share incentive priorities.

Section 523.6(d) (relettered as §523.6(e)), "Administration of Funds," is amended to include cost-share incentive priorities.

Proposed new §523.6(e)(2), concerning Approval of Cost-share Incentive Priority Allocations, is added to specify that the stakeholder process described in new §523.6(c) would be used to identify priorities, and that those recommendations would receive greater weight. The remaining paragraphs in subsection (e) are renumbered.

Section 523.6(d)(2) (relettered as §523.6(e)(3)) is amended to specify that it pertains to direct allocations and that requests for allocations to address water quality concerns would be considered over requests to address other issues. Direct allocations would be considered after cost-share incentive priorities.

Section 523.6(d)(3) (relettered as §523.6(e)(4)) is amended to specify that direct allocations would be funded with dollars not already allocated to a cost-share incentive priority.

Section 523.6(d)(4) (relettered as §523.6(e)(5)) is amended to clarify that the maximum cost-share amount may deviate from the established \$15,000 if the funds originate from other sources and that the amount would be established by the terms of the agreement that provided the other funds.

Section 523.6(e)(2)(B) (relettered as §523.6(f)(2)(B)) is amended to specify that increased acreage and an increase in animal waste production may result in the waiver of a one-time cost-share frequency limitation.

Section 523.6(e)(2)(E), which enables participants to receive cost-share funding in every instance where a previously mandated and cost-shared practice has reached its life expectancy, is deleted. The remaining subparagraphs in subsection (f)(2) are relettered.

Section 523.6(e)(2)(F) (relettered as §523.6(f)(2)(F)) is amended to clarify that this waiver is only applicable to the mandated practice and may not be applied more than one time to a single practice.

Section 523.6(f)(2)(A) (relettered as §523.6(g)(2)(A)) is amended to specify that the State Board would provide guidelines to districts with respect to announcing the availability of funding.

Section 523.6(f)(2)(C) (relettered as §523.6(g)(2)(C)) is amended to address both direct allocations and cost-share incentive priorities.

New §523.6(g)(2)(F) is established to provide for the State Board to confirm for a district whether or not an application qualifies for a particular cost-share incentive priority. The remaining subparagraphs in subsection (g)(2) are relettered.

Section 523.6(f)(2)(F) (relettered as §523.6(g)(2)(G)) is amended to include cost-share incentive priorities and clarify the process for reallocation of funds not obligated.

Section 523.6(f)(5) (relettered as §523.6(g)(5)) is amended to be consistent with adopted new §523.6(b)(12) relating to the maintenance agreement.

Section 523.7, Incentives for Composting Animal Manure, is adopted for repeal in this issue of the *Texas Register*, because the Dairy Manure Export Support Program is no longer in existence.

Section 523.8, Comprehensive Nutrient Management Planning in the North Bosque River Watershed, is adopted as new §523.7 and includes numerous repetitive amendments, including the use of "cost-share incentive funding" in place of "assistance."

No comments were received regarding adoption of the amendments and new section.

The amendments and new section are adopted under the Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

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 June 18, 2013.

TRD-201302530

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Effective date: July 8, 2013

Proposal publication date: March 29, 2013

For further information, please call: (254) 773-2250



31 TAC §523.7, §523.8

The Texas State Soil and Water Conservation Board (State Board) adopts the repeal of §523.7 and §523.8, concerning Agricultural and Silvicultural Water Quality Management, without changes to the proposal as published in the March 29, 2013, issue of the *Texas Register* (38 TexReg 2087).

Section 523.7, concerning Incentives for Composting Animal Manure, is adopted for repeal because the Dairy Manure Export Support Program no longer exists.

Section 523.8, concerning Comprehensive Nutrient Management Planning in the North Bosque River Watershed, is adopted for repeal and adopted as new §523.7 elsewhere in this issue.

No comments were received regarding the repeal of these sections.

The repeal is adopted under the Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

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 June 18, 2013.

TRD-201302531

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Effective date: July 8, 2013

Proposal publication date: March 29, 2013

For further information, please call: (254) 773-2250



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 343. SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POST-ADJUDICATION CORRECTIONAL FACILITIES

The Texas Juvenile Justice Department (TJJD) adopts amendments to §§343.100, 343.212, 343.224, 343.240, 343.288, 343.302, 343.332, 343.340, 343.342, 343.346, 343.348, 343.350, 343.400, 343.404, 343.446, 343.600, 343.602, 343.604, 343.638, 343.810, and 343.812 without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2204).

Six rules were amended to clarify the requirement to conduct certain reviews and inspections annually. The amended rules allow for the review or inspection, as applicable, to be completed no later than the last day of the calendar month of the previous year's review or inspection. This change applies to §343.212 (concerning Duties of Facility Administrator), §343.224 (concerning Alternate Power Source), §343.240 (concerning Safety Codes), §343.302 (concerning Menu Plans), §343.342 (concerning Review and Dissemination of Suicide Prevention Plan), and §343.810 (concerning Mechanical Restraint).

Section 343.348 (concerning Supervision of High Risk Suicidal Youth) and §343.350 (concerning Supervision of Moderate Risk Suicidal Youth) have been amended to remove the requirement that supervision logs must include the title of the juvenile supervision officer who is providing supervision.

In §343.100 (concerning Definitions), definitions were added for the following terms: *behavioral health assessment*, *psychological evaluation*, and *TJJD*. Clarification was added to indicate that any reference to the term *Commission* means TJJD. The term *mental health paraprofessional* was removed. The term *mental health professional* was replaced with *mental health provider*. Due to these new and deleted terms in §343.100, the following twelve rules required conforming changes: §343.288 (concerning Disciplinary Seclusion), §343.332 (concerning Behavioral Health Care Services for Sexual Abuse Victims), §343.340 (concerning Suicide Prevention Plan), §343.346 (concerning Mental Health Referral of High Risk Suicidal Youth), §343.348 (concerning Supervision of High Risk Suicidal Youth), §343.400 (concerning Intake and Admission), §343.404 (concerning Mental Health Screening and Referral), §343.446 (concerning Exceptions to General Levels of Supervision), §343.600 (concerning Required Pre-Admission Records), §343.602 (concerning Intake and Admission), §343.638 (concerning

Exceptions to General Levels of Supervision), and §343.812 (concerning Non-Ambulatory Mechanical Restraints).

The amended §343.212 (concerning Duties of Facility Administrator) limits the requirement to provide quarterly reports to the juvenile board to apply only to private pre- or post-adjudication facilities operated under contract with a governmental entity. This change is in addition to the change relating to annual reviews and inspections mentioned earlier.

The amended §343.604 (concerning Health Screening and Assessment) no longer requires a health screening for all intra-jurisdictional custodial transfers from a pre-adjudication facility to a post-adjudication facility. The revised rule requires this screening only if the post-adjudication facility that receives the juvenile is not located within the same premises as the pre-adjudication facility.

The justification for the amendments is clearer rules that are more consistent with terminology used by practitioners in the mental health field. Additionally, the amended rules will allow for operational efficiencies in juvenile probation departments.

TJJD did not receive any public comments regarding the proposed amendments.

SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

37 TAC §343.100

The amended section is adopted under Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for juvenile pre-adjudication secure detention facilities and juvenile post-adjudication secure correctional facilities.

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 June 20, 2013.

TRD-201302579

Brett Bray

General Counsel

Texas Juvenile Justice Department

Effective date: September 1, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 490-7014



SUBCHAPTER B. PRE-ADJUDICATION AND POST-ADJUDICATION SECURE FACILITY STANDARDS

37 TAC §§343.212, 343.224, 343.240, 343.288, 343.302, 343.332, 343.340, 343.342, 343.346, 343.348, 343.350

The amended sections are adopted under Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for juvenile pre-adjudication secure detention facilities and juvenile post-adjudication secure correctional facilities.

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 June 20, 2013.

TRD-201302580

Brett Bray

General Counsel

Texas Juvenile Justice Department

Effective date: September 1, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 490-7014



SUBCHAPTER C. SECURE PRE-ADJUDICATION DETENTION FACILITY STANDARDS

37 TAC §§343.400, 343.404, 343.446

The amended sections are adopted under Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for juvenile pre-adjudication secure detention facilities and juvenile post-adjudication secure correctional facilities.

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 June 20, 2013.

TRD-201302581

Brett Bray

General Counsel

Texas Juvenile Justice Department

Effective date: September 1, 2013

Proposal publication date: April 5, 2013

For further information, please call: (512) 490-7014



SUBCHAPTER D. SECURE POST-ADJUDICATION CORRECTIONAL FACILITY STANDARDS

37 TAC §§343.600, 343.602, 343.604, 343.638

The amended sections are adopted under Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for juvenile pre-adjudication secure detention facilities and juvenile post-adjudication secure correctional facilities.

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 June 20, 2013.

TRD-201302582

Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2013
Proposal publication date: April 5, 2013
For further information, please call: (512) 490-7014



SUBCHAPTER E. RESTRAINTS
37 TAC §343.810, §343.812

The amended sections are adopted under Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for juvenile pre-adjudication secure detention facilities and juvenile post-adjudication secure correctional facilities.

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 June 20, 2013.
TRD-201302583
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2013
Proposal publication date: April 5, 2013
For further information, please call: (512) 490-7014



**CHAPTER 380. RULES FOR STATE-
OPERATED PROGRAMS AND FACILITIES**
**SUBCHAPTER E. BEHAVIOR MANAGEMENT
AND YOUTH DISCIPLINE**
DIVISION 2. DUE PROCESS HEARINGS
37 TAC §380.9561

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.9561, concerning Detention for Youth Pending

Level I or II Hearing, without changes to the proposed text as published in the April 5, 2013, issue of the *Texas Register* (38 TexReg 2215).

The amended section reduces the frequency with which the referring staff member must visit a youth while the youth is detained in a community detention facility or a TJJD security unit. For youth in community detention facilities, the referring staff member must visit at least once every ten workdays. For youth detained in a TJJD security unit, the referring staff member must contact the youth and designated staff at the TJJD facility at least once every three calendar days.

The amended section also allows TJJD to detain a youth if the youth is a danger to himself/herself or others and all other detention criteria are met. The criterion requiring the youth to have a pending felony allegation has been removed. This change is consistent with detention criteria established in Family Code §54.01.

TJJD did not receive any public comments regarding the proposed amendments.

The amended section is adopted under Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions, and Human Resources Code §243.051, which authorizes TJJD to take into custody and detain a youth who has been released under supervision and broken the conditions of release.

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 June 20, 2013.
TRD-201302578
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: July 15, 2013
Proposal publication date: April 5, 2013
For further information, please call: (512) 490-7014



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Teacher Retirement System of Texas

Title 34, Part 3

TRD-201302593

Filed: June 21, 2013



Proposed Rule Reviews

Teacher Retirement System of Texas

Title 34, Part 3

The Teacher Retirement System of Texas (TRS) proposes to review Chapter 53 of TRS's rules, which is found in Title 34, Part 3 of the Texas Administrative Code. Chapter 53 concerns certification by companies who offer voluntary 403(b) investment options through salary reduction agreements between public school employees and their local employers.

TRS will review Chapter 53 in accordance with the requirements of §2001.039 of the Texas Government Code, which concerns the review of existing rules. TRS asserts that the reasons for adopting Chapter 53 continue to exist. TRS will review the chapter to update and improve the rules as needed. TRS will also file a rule review plan for Chapter 53 with the *Texas Register*.

Written comments pertaining to this proposed rule review must be submitted to Brian Guthrie, Executive Director, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701. The deadline for written comments is 30 days after publication of this proposed rule review notice in the *Texas Register*. In addition, the public will be given an opportunity to comment on the proposed rule review at a meeting of the TRS Board of Trustees (board) or the Policy Committee of the board or both.

Any changes to these rules proposed because of the rule review will be published in the Proposed Rule section of the *Texas Register*. The proposed rule changes will be open for public comment before final adoption or repeal by TRS in accordance with the requirements of the Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

TRD-201302594

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Filed: June 21, 2013



Texas Water Development Board

Title 31, Part 10

The Texas Water Development Board will review 31 Texas Administrative Code, Part 10, Chapter 353, Introductory Provisions, in accordance with Texas Government Code §2001.039.

The Texas Water Development Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 353 continues to exist. The comment period will end at 5:00 p.m., 30 days after this notice is published in the *Texas Register*.

Comments regarding this rule review may be submitted by email to rulescomments@twdb.texas.gov, by fax: at (512) 475-2053 or by mail: Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

TRD-201302705

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Filed: June 26, 2013



The Texas Water Development Board will review 31 Texas Administrative Code, Part 10, Chapter 359, Water Banking, in accordance with Texas Government Code §2001.039.

The Texas Water Development Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 359 continues to exist. The comment period will end at 5:00 p.m., 30 days after this notice is published in the *Texas Register*.

Comments regarding this rule review may be submitted by email to rulescomments@twdb.texas.gov, by fax: at (512) 475-2053 or by mail: Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

TRD-201302706

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Filed: June 26, 2013



The Texas Water Development Board will review 31 Texas Administrative Code, Part 10, Chapter 363, Financial Assistance Programs, in accordance with Texas Government Code §2001.039.

The Texas Water Development Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 363 continues to exist. The comment period will end at 5:00 p.m., 30 days after this notice is published in the *Texas Register*.

Comments regarding this rule review may be submitted by email to rulescomments@twdb.texas.gov, by fax: at (512) 475-2053 or by mail: Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

TRD-201302707
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: June 26, 2013



The Texas Water Development Board will review 31 Texas Administrative Code, Part 10, Chapter 364, Model Subdivision Rules, in accordance with Texas Government Code §2001.039.

The Texas Water Development Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 364 continues to exist. The comment period will end at 5:00 p.m., 30 days after this notice is published in the *Texas Register*.

Comments regarding this rule review may be submitted by email to rulescomments@twdb.texas.gov, by fax: at (512) 475-2053 or by mail: Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

TRD-201302708
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: June 26, 2013



The Texas Water Development Board will review 31 Texas Administrative Code, Part 10, Chapter 367, Agricultural Water Conservation Program, in accordance with Texas Government Code §2001.039.

The Texas Water Development Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 367 continues to exist. The comment period will end at 5:00 p.m., 30 days after this notice is published in the *Texas Register*.

Comments regarding this rule review may be submitted by email to rulescomments@twdb.texas.gov, by fax: at (512) 475-2053 or by mail: Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

TRD-201302709
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: June 26, 2013



Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of 7 TAC §91.101 (Definitions and Interpretations), §91.103 (Public Notice of Department Decisions), §91.104 (Public Notice and Comment on Certain Applications), §91.105 (Acceptance of Other Application Forms), §91.110 (Protest Procedures for Applications), §91.120 (Posting of Notice Regarding Certain Loan Agreements), §91.121 (Complaint Notification), §91.125 (Accuracy of Advertising), §91.201 (Incorporation Procedures), §91.202 (Bylaw and Articles of Incorporation Amendments), §91.203 (Share and Deposit Insurance Requirements), §91.205 (Credit Union Name), §91.206 (Underserved Area Credit Unions--Secondary Capital Accounts), §91.208 (Notice of Known or Suspected Criminal Violations), §91.209 (Call Reports and Other Information Requests), §91.210 (Foreign Credit Unions), §91.1003 (Mergers/Consolidations), §91.1005 (Conversion to a Texas Credit Union), §91.1006 (Conversions to a Federal or Out-of-State Credit Union), §91.1007 (Conversion to a Mutual Savings Institution), §91.1008 (Conversion Voting Procedures and Restrictions; Filing Requirements), §91.3001 (Opportunity to Submit Comments on Certain Applications), and §91.3002 (Conduct of Meetings to Receive Comments), as published in the March 29, 2013, issue of the *Texas Register* (38 TexReg 2145). The Commission readopts 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 §§91.101, 91.103 - 91.105, 91.110, 91.120, 91.121, 91.125, 91.201 - 91.203, 91.205, 91.206, 91.208 - 91.210, 91.1003, 91.1005 - 91.1008, 91.3001, and 91.3002 continue to exist and readopts these rules without changes pursuant to the requirements of Government Code, §2001.039.

TRD-201302619
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 24, 2013



Texas Department of Insurance

Title 28, Part 1

The Texas Department of Insurance has completed its review of all sections of the following chapters of Title 28, Part 1 of the Texas Administrative Code, as required by the Texas Government Code §2001.039: Chapter 1, General Administration; Chapter 3, Life, Accident, and Health Insurance and Annuities; Chapter 8, Hazardous Condition; Chapter 9, Title Insurance; Chapter 12, Independent Review Organizations; Chapter 13, Miscellaneous Insurers; Chapter 22, Privacy; Chapter 25, Insurance Premium Finance; Chapter 28, Supervision and Conservation; Chapter 29, Guaranty Acts; Chapter 31, Liquidation; Chapter 33, Continuing Care Retirement Facilities; and Chapter 34, State Fire Marshal.

The notice of proposed rule review was published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10259).

The department considered whether the reasons for initially adopting these sections continued to exist and whether these rules should be repealed, readopted, or readopted with amendments. The department also considered whether the sections were obsolete or were consistent with current procedures and practices of the Department.

The department received no written comments regarding the review of the sections.

The department has determined that the reasons for adopting the sections of Chapters 1, 3, 8, 12, 13, 22, 25, 28, 29, 31, and 33 continue to exist, and the sections are re-adopted in their present form.

The department has determined that the reasons for adopting the sections of Chapter 9, Subchapter A, §9.1; and Subchapter C continue to exist, and the sections are re-adopted in their present form.

The department has determined that the reasons for adopting the sections of Chapter 34, Subchapter A; Subchapter C; Subchapter D, §§34.401 - 34.403, 34.407, and 34.408; Subchapter E, §§34.501 - 34.523; and Subchapters F - M continue to exist, and the sections are re-adopted in their present form.

Any of the re-adopted sections may be subsequently proposed for revision under the Texas Administrative Procedure Act, Chapter 2001 of the Texas Government Code, and the department's internal procedures.

As a result of the review of Chapter 9, the department will propose the repeal of Subchapter A, §§9.11, 9.21, 9.30, 9.31 and 9.40; and Subchapter D in a separate rulemaking under the Texas Administrative Procedure Act.

As a result of the review of Chapter 34, the department will propose the repeal of Subchapter B; Subchapter D, §§34.404 - 34.406; and Subchapter E, §34.524 in a separate rulemaking under the Texas Administrative Procedure Act.

This concludes the department's review of the Texas Administrative Code, Title 28, Part 1, Chapters 1, 3, 8, 9, 12, 13, 22, 25, 28, 29, 31, 33, and 34.

TRD-201302685
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: June 25, 2013

◆ ◆ ◆
Joint Financial Regulatory Agencies

Title 7, Part 8

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") have completed the review of 7 Texas Administrative Code (TAC) Chapter 151, relating to Home Equity Lending Procedures, comprised of §§151.1 - 151.8; and Chapter 153, relating to Home Equity Lending, comprised of §§153.1 - 153.5, 153.7 - 153.18, 153.20, 153.22, 153.24, 153.25, 153.41, 153.51, 153.82, 153.84 - 153.88, and 153.91 - 153.96, pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapters 151 and 153 was published in the *Texas Register* as required on May 17, 2013 (38 TexReg 3069). No comments were received in response to that notice.

The commissions find that the reasons for initially adopting these rules continue to exist, and readopts these chapters in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC Chapters 151 and 153.

TRD-201302606
Leslie L. Pettijohn
Consumer Credit Commissioner
Joint Financial Regulatory Agencies
Filed: June 21, 2013

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.

TEXAS MORTGAGE COMPANY DISCLOSURE

Residential Mortgage Loan Originator: _____

NMLS ID: _____

Check ALL that apply

Duties and Nature of Relationship

We will submit your loan application to a participating lender which we may from time to time contract upon such terms as you may request or a lender may require. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent

We will make your loan ourselves. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent.

We will be acting as follows:

How we will be compensated

The retail price we offer you - your interest rate, total points, and fees - will include our compensation. In some cases we may be paid all of our compensation by you or by the lender or investor

Our pricing for your loan is based upon:

CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A COMPANY OR A RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED ~~[OBTAINED]~~ FROM THE DEPARTMENT'S ~~[DEPARTMENTS]~~ WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.

THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEB SITE AT WWW.SML.TEXAS.GOV.

Applicant(s)

Residential Mortgage Loan Originator

Signed: _____
Name: _____
Date: _____

Signed: _____
Name: _____
Date: _____

Signed: _____
Name: _____
Date: _____

DISCLOSURE TO PROPERTY OWNER ABOUT PROPERTY TAX LOANS

Property Tax Lender's Name: _____

Property Tax Lender's License #: _____

Property Tax Lender's Address: _____

What is a property tax loan?

You currently have a lien against your property for unpaid property taxes. The tax lien for unpaid taxes automatically attached to your property on January 1. You may pay the taxing unit(s) directly, or authorize the property tax lender to pay the taxes. In order for the property tax lender to pay the tax lien, you have to authorize the transfer of the lien from the taxing unit(s) and enter into a loan with the property tax lender. Unless you agree in writing, the property tax lender may not make the property tax loan. The property tax loan may include unpaid property taxes, penalties, and interest. The property tax lender may also assess closing costs and interest not to exceed 18% per year. This transaction does not remove the tax lien against your property. If you do not pay the property tax lender under the loan agreement, you may lose your property to foreclosure.

The property tax loan is the superior lien.

If you default on any lien against your property, this property tax loan will be superior, i.e., "first in line" to be paid, over any other preexisting lien on your property (e.g., first or secondary mortgage).

You may have alternatives to this property tax loan.

If this property is your homestead and you are disabled, you are entitled to tax deferral under Texas Tax Code, §33.06. You may arrange with the taxing unit(s) to enter into an installment agreement for the repayment of these taxes. You may have financing options available to you through other private lenders, such as establishing an escrow account or refinancing your existing mortgage to include the taxes. You may be able to borrow from savings or family members. You may shop around with other property tax lenders and compare the different loan terms offered by other lenders.

Foreclosure is possible.

If you don't pay, you may lose your property. The tax lien may be considered a default by any mortgage holder with a lien on the same property. The only way to correct the default is to pay off the taxes and have the lien released. Any secured loan may be foreclosed if the loan is in default. The cost of any foreclosure, either tax lien or mortgage, may be added to the amount you owe.

Contact the Office of Consumer Credit Commissioner if you have questions or problems.

For more information about property tax lenders, contact the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, www.occc.state.tx.us.

Before you sign a property tax loan, be sure that you understand this document.

You may seek advice from an attorney or any third party before you enter into a property tax loan. You should ask about the terms of any loan you are considering and you should read any document before signing it.

Figure: 7 TAC §89.701(c)

STATE OF TEXAS
COUNTY OF

§
§
§
§

After recording, return to:
(Insert TRANSFEREE'S NAME)
(Insert TRANSFEREE'S
STREET ADDRESS)

SWORN DOCUMENT AUTHORIZING TRANSFER OF TAX LIEN

Before me, the undersigned notary, on this day personally appeared (Insert NAME(S) OF OWNER(S) OR AUTHORIZED REPRESENTATIVE(S)), known to me to be the person(s) whose name(s) is/are subscribed below, and being duly sworn, upon oath deposed and stated as follows:

"My name is (Insert NAME(S) OF OWNER(S) OR AUTHORIZED REPRESENTATIVE(S)). I am over 18 years of age and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. I or the entity I represent owns the real property described as follows:

Account No. or Property ID No.: _____

Legal Description: _____

Street Address, if applicable: _____

Amount Paid for Transfer (including taxes, penalties, interest, and collection costs): \$ _____

Tax Years: _____

Transferee's Name: _____

OCCC Property Tax License Lender No.: _____

OR Exemption Information: _____

Transferee's Street Address: _____

"Pursuant to Texas Tax Code §32.06, I hereby authorize the above-named transferee or transferee's agent (the "Transferee"), to pay all taxes, penalties, interest, and collection costs imposed by any and all local taxing units or their agents on the real property, described above, for the tax years listed above. I further authorize and direct the tax assessor-collector(s) for said taxing units to issue a tax receipt with the collector's seal of office or notarized signature to the Transferee and to certify that the taxes and any penalties and interest on the subject property and collection costs have been paid by the transferee on behalf of the owner, and the tax lien on the owner's property has been transferred to the Transferee.

"I have been given notice that if this property is my homestead and I am disabled, I may be eligible for a tax deferral under Texas Tax Code §33.06."

Property Owner
OR Authorized Representative: Signature _____ Date Signed _____

Printed Name _____ Representative Capacity (if applicable) _____

(Insert NOTARY'S SEAL)

SUBSCRIBED AND SWORN TO BEFORE ME on this, the _____ day of _____, 20_____.

Notary Public, State of Texas

REQUEST FOR PROPERTY TAX LOAN PAYOFF STATEMENT

Date of request:	Requested balance date: <i>(must be 7–30 days from request date)</i>
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REQUESTING LIENHOLDER INFORMATION:

Lienholder name:	Lienholder address:
(Optional: Lienholder phone/fax number:)	(Optional: Lienholder e-mail address:)
(Optional: Mortgage servicer name:)	(Optional: Mortgage servicer address:)
(Optional: Mortgage servicer phone/fax number:)	(Optional: Mortgage servicer e-mail address:)

PROPERTY TAX LENDER INFORMATION:

Property tax lender name:	(Optional: Property tax lender address:)
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BORROWER / PROPERTY INFORMATION:

Borrower name:	Address of property subject to property tax loan:
(Optional: Co-borrower name:)	Tax account or property identification number: (or Loan number:)

We (the lienholder) request a statement of the total amount due under the property tax loan on the property listed above, as of the requested balance date. We hold an existing recorded lien on the property. We are making this request under Section 32.06(a-6) of the Texas Tax Code.

The payoff statement should be delivered to us within 7 business days of when you receive this request, unless Title 7, Section 89.802 of the Texas Administrative Code provides otherwise.

Please send the written payoff statement to the following:

- E-mail address: _____
- Fax number: _____
- Mailing address: _____

PROPERTY TAX LOAN PAYOFF STATEMENT

Date of payoff statement: _____

PROPERTY TAX LENDER INFORMATION:

Property tax lender name:	Property tax lender address:
(Optional: Property tax lender phone/fax number:)	(Optional: Property tax lender e-mail:)

BORROWER / PROPERTY INFORMATION:

Borrower name:	Address of property subject to property tax loan:
(Optional: Co-borrower name:)	Tax account or property identification number: (or Loan number:)

PAYOFF INFORMATION:

Total payoff amount:	Balance date:												
<p>ITEMIZATION OF TOTAL PAYOFF AMOUNT:</p> <p>The total payoff amount is the total amount due under the property tax loan, as of the balance date stated above.</p> <p>The total payoff amount includes:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Unpaid principal balance</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>Interest as of balance date</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>(Additional fee description</td> <td style="text-align: right;">\$ _____)</td> </tr> <tr> <td>(Additional fee description</td> <td style="text-align: right;">\$ _____)</td> </tr> <tr> <td colspan="2" style="border-top: 1px solid black; padding-top: 5px;"> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Total payoff amount</td> <td style="text-align: right;">\$ _____</td> </tr> </table> </td> </tr> </table>		Unpaid principal balance	\$ _____	Interest as of balance date	\$ _____	(Additional fee description	\$ _____)	(Additional fee description	\$ _____)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Total payoff amount</td> <td style="text-align: right;">\$ _____</td> </tr> </table>		Total payoff amount	\$ _____
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Next payment due date:	Per diem interest after balance date:												

Figure: 22 TAC §213.33(b)

Texas Board of Nursing Disciplinary Matrix

In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board will consider the threat to public safety, the seriousness of the violation, and any aggravating or mitigating factors. The Board currently lists factors to be considered in Rule 213.33, published at 22 Tex. Admin. Code §213.33. The Matrix may list additional aggravating or mitigating factors which may be considered in addition to the factors listed in Rule 213.33. Further, any aggravating or mitigating factors that may exist in a particular matter, but which are not listed in this Matrix or Rule 213.33, may also be considered by the Board, pursuant to the Occupations Code Chapters 53 and 301.

Additionally, the Board shall consider whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301; or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301. Further, the Board will consider the seriousness of the violation, the threat to public safety, and any aggravating or mitigating factors.

If the person is being disciplined for multiple violations of either Chapter 301, or a rule or order adopted under Chapter 301, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and

If the person has previously been the subject of disciplinary action by the Board, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

The Board may assess administrative penalties as outlined in 22 Tex. Admin. Code §213.32.

Although not addressed by this Matrix, the Board may also seek to assess costs of a contested case proceeding authorized by the Occupations Code §301.461.

Although not addressed by this Matrix, the Occupations Code §301.4521 authorizes the Board to require an individual to submit to an evaluation if the Board has probable cause to believe that the individual is unable to safely practice nursing due to physical impairment, mental impairment, chemical dependency, or abuse of drugs of alcohol. Section 301.4521 also authorizes the Board to request an individual to submit to an evaluation for other reasons, such as reported unprofessional conduct, lack of good professional character, or prior criminal history. The Board's rules regarding evaluations are published at 22 Tex. Admin. Code §213.29, §213.30, and §213.33.

This Matrix is also applicable to the determination of an individual's eligibility for licensure under the Occupations Code §301.257.

§301.452(b)(1) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301:

<p><u>First Tier Offense:</u></p> <p>Isolated failure to comply with procedural Board rule, such as failure to renew license within six (6) months of its due date/renewal date or failure to complete continuing competency requirements*.</p> <p>Failure to comply with a technical, non-remedial requirement in a prior Board order or stipulation, such as failure to timely pay fine, failure to timely complete remedial education stipulation, missed employer reports, or employer notification forms.</p>	<p><u>Sanction Level I:</u></p> <p>Remedial Education, with or without a fine of \$250.00 or more for each additional violation.</p> <p>If stipulations in prior Board order are still outstanding, full compliance with and continuation of prior Board order and a fine of \$250 or more for each additional violation.</p>	<p><u>Sanction Level II:</u></p> <p>Warning or Reprimand with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, periodic board review; and/or a fine of \$500 or more for each additional violation.</p>
<p><u>Second Tier Offense:</u></p> <p>Failure to comply with a substantive requirement in a prior Board order or stipulation. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation. Any violation of Board order that could pose a risk of harm to patients or public. Practice on a delinquent license for over two (2) years, but less than four (4) years.</p>	<p><u>Sanction Level I:</u></p> <p>Requirement to complete conditions of original Board order and a fine of \$500.00 or more for each additional violation. Respondent may be subject to next higher sanction and an extension of the stipulations. Violations of stipulations that are related to alcohol or drug misuse will result in next higher administrative sanction (ex: a violation of a Board approved Peer Assistance Order may result in an Enforced Suspension until the nurse receives treatment and obtains one (1) year of sobriety and then probation of the license with a fine and drug stipulations for three (3) years).</p>	<p><u>Sanction Level II:</u></p> <p>Denial of Licensure, Suspension, Revocation, or Voluntary Surrender.</p>

<p><u>Third Tier Offense:</u></p> <p>Violation of substantive probationary restriction required in a Board Order that limits the practice setting or scope of practice. Failing to comply with substantive probationary restriction required in a Board Order; for example, repeated failure to submit to random drug screens or intentional submission of false or deceptive compliance evidence. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation.</p>	<p><u>Sanction Level I:</u></p> <p>Revocation or Voluntary Surrender.</p>	<p><u>Sanction Level II:</u></p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances for §301.452(b)(1): Multiple offenses; continued failure to register for available remedial classes; recurring failure to provide information required by order; patient vulnerability, impairment at time of incident, failure to cooperate with compliance investigator.</p>		
<p>Mitigating Circumstances for §301.452(b)(1): Unforeseen financial or health issues; not practicing nursing during stipulation period.</p>		
<p>* Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.</p>		

<p>§301.452(b)(2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;</p>		
<p><u>First Tier Offense:</u></p> <p>Failure to honestly and accurately provide information that may have affected the Board determination of whether to grant a license. *</p>	<p><u>Sanction Level I:</u></p> <p>Remedial Education and/or a fine of \$250 or more for each additional violation.</p>	<p><u>Sanction Level II:</u></p> <p>Denial of Licensure or Revocation of nursing license.</p>

<p>Second Tier Offense:</p> <p>Intentional misrepresentation of previous nurse licensure, education, extensive criminal history, multiple violations/offenses, an offense which is listed in the Occupations Code §301.4535, or professional character, including when license has been or is requested to be issued based on fraudulent diploma or fraudulent educational transcript.</p>	<p>Sanction Level I:</p> <p>Denial of Licensure or Revocation of nursing license.</p>	<p>Sanction Level II:</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances for §301.452(b)(2): Multiple offenses; the relevance or seriousness of the hidden information, whether the hidden information, if known, would have prevented licensure.</p>		
<p>Mitigating Circumstances for §301.452(b)(2):Seriousness of the hidden violation; age of applicant at time applicant committed violation; and applicant's justified reliance upon advice of legal counsel.</p>		
<p>* Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.</p>		
<p>§301.452(b)(3) a conviction for, or placement on deferred adjudication, community supervision, or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;</p> <p>Eligibility and Discipline will be reviewed under Board's Disciplinary Guidelines for Criminal Conduct published at http://www.bon.texas.gov/disciplinaryaction/discp-guide.html. The Board will also utilize 22 Tex. Admin. Code 213.28, the Occupations Code §301.4535, and the Occupations Code Chapter 53, including §53.021(b), which provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.</p>		

§301.452(b)(4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;

Eligibility and Discipline will be reviewed under the Board's Disciplinary Guidelines for Criminal Conduct published at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html>. The Board will also utilize 22 Tex. Admin. Code §213.28, the Occupations Code §301.4535, and the Occupations Code Chapter 53, including §53.021(b), which provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

§301.452(b)(5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;

Sanction:

Issuance of Cease and Desist Order with referral of all information to local law enforcement.

301.452(b)(6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;

Sanction:

Revocation of license for this offense.

§301.452(b)(7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing;		
<u>First Tier Offense:</u> Negligently or Recklessly aiding an unlicensed person in connection with unauthorized practice. For example, failing to verify credentials of those who are supervised by the nurse* or allowing Certified Nurse Aids to administer medications or otherwise practice beyond their appropriate scope.	<u>Sanction Level I:</u> Remedial Education and/or a fine of \$250 for a single or isolated incident. When there exists chronic violations or multiple violations then Warning or Reprimand with Stipulations that may include remedial education; supervised practice; limit specific nursing activities; periodic board review; and/or a fine of \$250 or more for each additional violation.	<u>Sanction Level II:</u> Denial of Licensure, Revocation or Voluntary Surrender when omission or violation is associated with high risk of patient injury or death.
<u>Second Tier Offense:</u> Knowingly aiding an unlicensed person in connection with unauthorized practice of nursing.	<u>Sanction Level I:</u> Denial of Licensure, Revocation or Voluntary Surrender.	<u>Sanction Level II:</u> Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.
Aggravating Circumstances of §301.452(b)(7): Multiple offenses, intentional violation of institutional and BON rules, patient harm or risk of harm.		
Mitigating Circumstances of §301.452(b)(7): The existence of institutional policies that allow certain practices by unlicensed persons with certified competency.		
* Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.		

<p>§301.452(b)(8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction;</p>		
<p><u>First Tier Offense:</u></p> <p>Action in another jurisdiction results from a default order issued due to the nurse's failure to answer violations, and the violations are not those in which the other jurisdiction or Texas would have revoked the license but for the nurse's failure to respond.</p> <p>Action in another jurisdiction is based on alcohol or substance misuse and the nurse is otherwise eligible for a stipulation of the license based on Board's rules and alcohol or substance misuse policy.</p> <p>http://www.bon.state.tx.us/disciplinaryaction/dsp.html.</p>	<p><u>Sanction Level I:</u></p> <p>Warning or Reprimand with Stipulations, which may include remedial education; supervised practice; perform public service; verified abstinence from unauthorized use of drugs and alcohol to be verified through urinalysis; limit specific nursing activities; and/or periodic board review.</p> <p>Order to participate in Board approved peer assistance program.</p> <p>Action should be at least consistent with action from other jurisdiction.</p>	<p><u>Sanction Level II:</u></p> <p>Revocation, Suspension, or Denial of License when the individual doesn't respond or is not eligible for stipulated license.</p> <p>Action should be at least consistent with action from other jurisdiction.</p>
<p><u>Second Tier Offense:</u></p> <p>Revocation in another jurisdiction based on practice violations or unprofessional conduct that could result in similar sanction (revocation) in Texas.</p>	<p><u>Sanction Level I:</u></p> <p>Revocation, denial of licensure, or voluntary surrender.</p>	<p><u>Sanction Level II:</u></p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances for §301.452(b)(8): Multiple offenses, patient vulnerability, impairment during the incident, the nature and seriousness of the violation in the other jurisdiction, and patient harm or risk of harm associated with the violation, criminal conduct.</p>		

Mitigating Circumstances for §301.452(b)(8): Nurse's failure to defend against the notice of violations and the resulting default order was not result of conscious indifference. The nurse has a meritorious defense against the unanswered violations outlined in the default order.

§301.452(b)(9) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient;

<p>First Tier Offense:</p> <p>Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. No previous history of misuse and no other aggravating circumstances.</p>	<p><u>Sanction Level I:</u></p> <p>Referral to a Board approved peer assistance program for nurses pursuant to Board rules and policy on alcohol or substance abuse or misuse.</p> <p>http://www.bon.state.tx.us/disciplinaryaction/dsp.html.</p>	<p><u>Sanction Level II:</u></p> <p>For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Warning with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities and/or periodic board review. Appropriate when individual declines participation in peer assistance program or are otherwise ineligible for the program.</p>
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<p><u>Second Tier Offense:</u></p> <p>Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. However, individual has a previous history of peer assistance program participation or previous Board order.</p>	<p><u>Sanction Level I:</u></p> <p>Board ordered participation in a Board approved peer assistance program for nurses pursuant to Board rules and policy on alcohol or substance abuse or misuse. Includes individuals with non disciplinary history of peer assistance participation.</p> <p>http://www.hon.state.tx.us/disciplinaryaction/dsp.html.</p> <p>For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Reprimand with Stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review.</p>	<p><u>Sanction Level II:</u></p> <p>Suspension of License until treatment and verifiable proof of at least one year sobriety; thereafter a stay of suspension with stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review. Includes individuals with prior disciplinary history with peer assistance participation.</p> <p>For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Suspension of License, which shall be probated, and stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review.</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
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<p><u>Third Tier Offense:</u></p> <p>Misuse of drugs or alcohol with a risk of patient harm or adverse patient effects. Misuse of drugs or alcohol and other serious practice violation noted.</p>	<p><u>Sanction Level I:</u></p> <p>Referral to a Board approved peer assistance program if no actual patient harm, no previous history of drug or alcohol misuse, and no other aggravating circumstances.</p> <p>Board ordered participation in an approved peer assistance program if no actual patient harm and no other aggravating circumstances.</p> <p>For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Warning or Reprimand with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified through urinalysis; limit specific nursing activities, and/or periodic board review.</p> <p>Denial of Licensure until applicant establishes he/she has received treatment and demonstrates one (1) year of verifiable sobriety, then license with stipulations that include supervision; limited practice; abstinence from drugs/alcohol; and random drug testing through urinalysis.</p>	<p><u>Sanction Level II:</u></p> <p>Suspension of License until treatment, verifiable proof of at least one year sobriety, thereafter a stay of suspension with stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities; and/or periodic board review.</p> <p>For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Suspension of License, which shall be probated, and stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review.</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.455I, which may ultimately result in revocation.</p>
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<p><u>Fourth Tier Offense:</u></p> <p>Misuse of drugs or alcohol with serious physical injury or death of a patient or a risk of significant physical injury or death.</p>	<p><u>Sanction Level I:</u></p> <p>Denial of Licensure, Revocation or Voluntary Surrender.</p>	<p><u>Sanction Level II:</u></p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances for §301.452(b)(9): Actual harm; severity of harm; number of events; illegal substance; criminal action; criminal conduct or criminal action involved, criminal justice probation; inappropriate use of prescription drug; unsuccessful / repeated treatment; concurrent diversion violations. Ineligible to participate in approved peer assistance program because of program policy or Board policy.</p>		
<p>Mitigating Circumstances for §301.452(b)(9): Self-remediation, including participation in inpatient treatment, intensive outpatient treatment, and after care program. Verifiable proof of sobriety by random, frequent drug/alcohol screens.</p>		

<p>§301.452(b)(10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;</p>		
<p><u>First Tier Offense:</u></p> <p>Isolated failure to comply with Board rules regarding unprofessional conduct resulting in unsafe practice with no adverse patient effects.</p> <p>Isolated violation involving minor unethical conduct where no patient safety is at risk, such as negligent failure to maintain client confidentiality or failure to honestly disclose or answer questions relevant to employment or licensure.*</p>	<p><u>Sanction Level I:</u></p> <p>Remedial Education and/or a fine of \$250 or more for each additional violation. Elements normally related to dishonesty, fraud or deceit are deemed to be unintentional.</p>	<p><u>Sanction Level II:</u></p> <p>Warning with Stipulations that may include remedial education; supervised practice; perform public service; limit specific nursing activities; and/or periodic Board review; and/or a fine of \$500 or more for each additional violation. Additionally, if the isolated violations are associated with mishandling or misdocumenting of controlled substances (with no evidence of impairment) then stipulations may include random drug screens to be verified through urinalysis and practice limitations.</p>

<p><u>Second Tier Offense:</u></p> <p>Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious risk to patient or public safety. Repeated acts of unethical behavior or unethical behavior which places patient or public at risk of harm. Personal relationship that violates professional boundaries of nurse/patient relationship.</p>	<p><u>Sanction Level I:</u></p> <p>Warning or Reprimand with Stipulations which may include remedial education, supervised practice, and/or perform public service. Fine of \$250 or more for each violation. If violation involves mishandling or misdocumenting of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances, then the stipulations will also include abstinence from unauthorized use of drugs and alcohol, to be verified by random drug testing through urinalysis, limit specific nursing activities, and/or periodic Board review. Board will use its rules and disciplinary sanction policies related to drug or alcohol misuse in analyzing facts.</p> <p>http://www.bon.state.tx.us/disciplinaryaction/dsp.html</p>	<p><u>Sanction Level II:</u></p> <p>Denial of Licensure, Suspension, or Revocation of Licensure. Any Suspension would be enforced at a minimum until nurse pays fine, completes remedial education and presents other rehabilitative efforts as prescribed by the Board. If violation involves mishandling of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances then suspension will be enforced until individual has completed treatment and one year verifiable sobriety before suspension is stayed, thereafter the stipulations will also include abstinence from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities and/or periodic Board review.</p> <p>Probated suspension will be for a minimum of two (2) or three (3) years with Board monitored and supervised practice depending on applicable Board policy. Financial exploitation of a patient or public will require full restitution before nurse is eligible for unencumbered license.</p>
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<p><u>Third Tier Offense:</u></p> <p>Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious patient harm. Repeated acts of unethical behavior or unethical behavior which results in harm to the patient or public. Sexual or sexualized contact with patient. Physical abuse of patient. Financial exploitation or unethical conduct resulting in a material or financial loss to a patient of public in excess of \$4,999.99.</p>	<p><u>Sanction Level I:</u></p> <p>Denial of licensure or revocation of nursing license.</p> <p>Nurse or individual is not subject to licensure or reinstatement of licensure until restitution is paid.</p>	<p><u>Sanction Level II:</u></p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances for §301.452(b)(10): Number of events, level of material or financial gain, actual harm, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, involvement of or impairment by alcohol, illegal drugs, or controlled substances or prescription medications, criminal conduct.</p>		
<p>Mitigating Circumstances for §301.452(b)(10): Voluntary participation in established or approved remediation or rehabilitation program and demonstrated competency, full restitution paid.</p>		
<p>* Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.</p>		
<p>§301.452(b)(11) adjudication of mental incompetency;</p>		
	<p><u>Sanction Level I:</u></p> <p>Denial of licensure or revocation of nursing license.</p>	<p><u>Sanction Level II:</u></p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.</p>

§301.452(b)(12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or		
<u>First Tier Violation:</u>	<u>Sanction Level I:</u>	<u>Sanction Level II:</u>
A physical condition or diagnosis of schizophrenia and or other psychotic disorder, bi-polar disorder, paranoid personality disorder, and/or anti-social personality disorder, and/or borderline personality disorder without patient involvement or harm; but less than two years of compliance with treatment and less than two years of verifiable evidence of competent functioning.	Referral to the Board approved Peer Assistance Program or Warning with Stipulations for a minimum of one (1) year to include therapy and appropriate treatment and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic Board review.	Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic Board review.
<u>Second Tier Violation:</u>	<u>Sanction Level I:</u>	<u>Sanction Level II:</u>
Lack of fitness based on any mental health or physical health condition with potential harm or adverse patient effects or other serious practice violations. "Lack of fitness" includes observed behavior that includes, but is not limited to: slurred speech, unsteady gait, sleeping on duty, inability to focus or answer questions appropriately.	With evidence of drug or alcohol misuse: Refer to Sanctions in §301.452(b)(9). Warning or Reprimand with Stipulations for a minimum of one (1) year to include supervision, therapy, and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic Board review.	With evidence of drug or alcohol misuse: Refer to Sanctions in 301.452(b)(9). Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities and/or periodic Board review.

<p><u>Third Tier Violation:</u></p> <p>Lack of fitness based on any mental health or physical health condition with evidence of patient harm, significant risk of harm, or other serious practice violations.</p>	<p><u>Sanction Level I:</u></p> <p>Denial of licensure or revocation of nursing license.</p>	<p><u>Sanction Level II:</u></p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances of §301.452(b)(12): Seriousness of mental health diagnosis, multiple psychotic episodes, lack of successful treatment or remediation, number of events or hospitalization, actual harm, severity of harm, prior complaints or discipline for similar conduct.</p>		
<p>Mitigating Circumstances of §301.452(b)(12): Self report, length of time since condition was relevant, successful response to treatment, positive psychological/chemical dependency evaluation from a board approved evaluator who has opportunity to review the Board's file.</p>		

<p>§301.452(b)(13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.</p>		
<p><u>First Tier Offense:</u></p> <p>Practice below standard with a low risk of patient harm.</p>	<p><u>Sanction Level I:</u></p> <p>Remedial Education and/or fine of \$250 when there is isolated incident or a fine of more than \$250 for each additional violation.</p>	<p><u>Sanction Level II:</u></p> <p>Warning or Reprimand with Stipulations that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic board review and/or fine of \$500 or more for each additional violation.</p>

<p><u>Second Tier Offense:</u></p> <p>Practice below standard with patient harm or risk of patient harm.</p>	<p><u>Sanction Level I:</u></p> <p>Warning or Reprimand with Stipulations that may include supervised practice, limited specific nursing activities and/or periodic board review and/or a fine of \$500 or more for each additional violation.</p>	<p><u>Sanction Level II:</u></p> <p>Denial, suspension of license, revocation of license, or request for voluntary surrender.</p>
<p><u>Third Tier Offense:</u></p> <p>Practice below standard with a serious risk of harm or death that is known or should be known. Act or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency.</p> <p>In addition, any intentional act or omission that risks or results in serious harm.</p>	<p><u>Sanction Level I:</u></p> <p>Denial, suspension of license; revocation of license or request for voluntary surrender.</p>	<p><u>Sanction Level II:</u></p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p>
<p>Aggravating Circumstances for §301.452(b)(13): Number of events, actual harm, impairment at time of incident, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, failure to demonstrate competent nursing practice consistently during nursing career.</p>		
<p>Mitigating Circumstances for §301.452(b)(13): Outcome not a result of care, participation in established or approved remediation or rehabilitation program and demonstrated competency, systems issues.</p>		

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Applications: Survey of Texas Rural and Agricultural Workforce Grant

Statement of Purpose. The Texas Department of Agriculture (TDA) is requesting applications for the 2013 Survey of Texas Rural and Agricultural Workforce Grant (Program). Rural businesses, manufacturers and farm operations have challenges filling jobs in non-urban areas. The purpose of this grant is to develop data collection tools, conduct surveys and analyze information related to rural Texas workforce needs and barriers, including but not limited to the agriculture sector. Results should give a better understanding of specific challenges faced by employers, factors that may discourage qualified workers and other relevant analyses.

Eligibility. Grant proposals will be accepted from public and private research institutions. This includes institutions of higher education and governmental research entities.

Funding Parameters. It is anticipated that a single application will be funded in a range of \$25,000 to \$40,000. Grantee must have the financial capability to pay all costs up-front.

Awards are subject to the availability of funds. If funds are not appropriated or available for this grant, applicants will be informed accordingly.

Term of Funding or Duration of Projects. Notice of grant award is anticipated to be made in July 2013. The approved project will have an anticipated start date of July 15, 2013 and must be completed by September 30, 2013.

Application Requirements. To be considered, applications must be complete and include all of the required information. Application and information can be downloaded from the Grants Office section under the Grants and Services tab at www.TexasAgriculture.gov.

Deadline for Submission of Responses. The complete application packet including the proposal with signatures must be **received** by Tuesday, July 9, 2013. It is the applicant's responsibility to submit all materials necessary for evaluation early enough to ensure timely delivery. Hand-delivered, mailed, faxed or emailed applications must be RECEIVED by TDA by close of business (5:00 p.m.) on Tuesday, July 9, 2013. *Late or incomplete proposals will not be accepted.*

TDA will send an acknowledgement receipt by email indicating the application was received.

Contact Information. For questions regarding submission of the proposal and/or TDA requirements, please contact Mindy Fryer, grants specialist, at (512) 463-6908, or by email at Grants@TexasAgriculture.gov.

TRD-201302710
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: June 26, 2013



Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - May 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 May 2013 is \$70.65 per barrel for the three-month period beginning on February 1, 2013, and ending April 30, 2013. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of May 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 May 2013 is \$2.99 per mcf for the three-month period beginning on February 1, 2013, and ending April 30, 2013. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of May 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 May 2013 is \$94.80 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of May 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 May 2013 is \$4.07 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of May 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-201302574
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: June 20, 2013



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 Financial Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/01/13 - 07/07/13 is 18% for Commercial over \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/01/13 - 07/07/13 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201302680

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: June 24, 2013



Credit Union Department

Standard Credit Union Bylaws

The Credit Union Commission (the Commission) proposes amendments to the Standard Bylaws for State Chartered Credit Unions (Standard Bylaws) relating to the number of honorary or advisory directors that may be appointed by a credit union board.

The amendments to the Standard Bylaws implements a new provision enacted in the 83rd Session of the Legislature that was contained within Senate Bill 244. The provision amended §122.056(a) of the Texas Finance Code to change the maximum number of board-appointed honorary or advisory directors from three to six. The proposed amendment brings the Standard Bylaws into conformity with the statutory changes required by SB 244.

Stacey McLarty, General Counsel, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. McLarty has also determined that, for each year of the first five years, the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be compliance with the new legislation. There is no anticipated effect on small or micro businesses as a result of adopting the amended rule. There is no anticipated economic cost to credit unions or individuals for complying with the amendment, 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 amendment is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the proposed amendment is Texas Finance Code, §122.056.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

CHAPTER V. DIRECTION OF AFFAIRS

Section 5.01. BOARD OF DIRECTORS

(a) Number of Directors. The board of directors of this credit union shall consist of ___ individual members who shall be elected as provided in these bylaws. (The number of directors cannot be less than five). All of the directors shall be members of this credit union. No re-

duction in the number of directors may be made unless corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office or other actions provided by these bylaws.

(b) Employees on Board of Directors.

OPTION 1

No director or immediate family member of a director may be a paid employee of the credit union.

OPTION 2

(Fill in the number) director(s) may be a paid employee of the credit union or immediate family members of employees of the credit union. In no case may employees of the credit union and/or immediate family members of employees of the credit union constitute a majority of the board or be the chairman, vice-chairman, or secretary of the board.

(c) Term of Office. Regular terms of office for directors shall be for ___ years. (The term of office cannot be greater than three years). All regular terms must be for the same number of years, and directors shall hold office until successors are elected and have qualified unless disqualified or removed. The regular terms must be fixed at the beginning, or upon any increase or decrease in the number of directors, such that approximately an equal number of regular terms must expire at each annual meeting.

(d) Vacancies. Vacancies on the board of directors will be filled by election at each annual meeting by and from the membership of the credit union.

(e) Terms. Directors may serve more than one term.

(f) Honorary Directors. The board may appoint not more than six [~~three~~] honorary or advisory directors who serve at the pleasure of the board and who advise and consult with the board and aid the board in carrying out its duties and responsibilities. An honorary or advisory director is not considered a member of the board and is not entitled to vote on any matter before the board but, if the Board so determines, may participate in deliberations of the board. An honorary or advisory director need not be eligible for membership in the credit union.

TRD-201302622

Harold E. Feeney

Commissioner

Credit Union Department

Filed: June 24, 2013



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 August 5, 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 August 5, 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: AFSHA SOMANI INCORPORATED dba King Mart 2; DOCKET NUMBER: 2013-0018-PST-E; IDENTIFIER: RN102901766; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: APAC-Texas, Incorporated; DOCKET NUMBER: 2013-0198-AIR-E; IDENTIFIER: RN100829498; LOCATION: Waco, McLennan County; TYPE OF FACILITY: asphalt plant; RULE VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code, §382.085(b), and New Source Review Permit Number 42292, Special Conditions Number 6, by failing to comply with the 5% opacity limit averaged over a six-minute period from the baghouse stack; PENALTY: \$1,712; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Archdiocese of Galveston-Houston; DOCKET NUMBER: 2013-0661-MWD-E; IDENTIFIER: RN101523215; LOCATION: Montgomery County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014218001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$5,250; Supplemental Environmental Project offset amount of \$4,200 applied to Bayou Land Conservancy formerly known as Legacy Land Trust; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: AUTOZONE TEXAS, L.P.; DOCKET NUMBER: 2013-0472-PWS-E; IDENTIFIER: RN101651974; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to timely provide the results of annual nitrate/nitrite sampling to the executive director for the 2010 monitoring period; 30 TAC §290.106(e), by failing to timely provide the results of annual nitrate/nitrite sampling to the executive director for the 2011 and 2012 monitoring periods; PENALTY: \$150; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Bao Vu Nguyen and Phuong Nguyen dba Carousel Mobile Home Park; DOCKET NUMBER: 2013-0591-PWS-E; IDENTIFIER: RN101187847; LOCATION: Brazos County; TYPE OF FACILITY: mobile home park with a 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 a 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 §290.43(d)(3), by failing to provide the air injection line with a filter or other device to prevent compressor lubricants and other contaminants from entering the pressure tank; 30 TAC §290.46(f)(2), (3)(A)(i)(III), and (B)(iv), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; 30 TAC §290.46(h), by failing to maintain a supply of calcium hypochlorite on hand for use when making repairs; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; and 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; PENALTY: \$350; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: BASF Corporation; DOCKET NUMBER: 2013-0400-AIR-E; IDENTIFIER: RN100634922; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: pesticide manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Texas Health and Safety Code, §382.085(b), and New Source Review Permit Number 3715A, Special Conditions Number 1, by failing to maintain an emission rate below the allowable emission rate during an initial performance test of the Thermal Oxidizer, Emission Point Number K-740; PENALTY: \$9,360; Supplemental Environmental Project offset amount of \$3,744 applied to Texas Air Research Center; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: CASCADE CAVERN, INCORPORATED; DOCKET NUMBER: 2013-0574-PWS-E; IDENTIFIER: RN101225340; LOCATION: Kendall County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to timely provide the results of annual nitrate/nitrite sampling to the executive director for the 2010-2012 reporting period; and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and Texas Health and Safety Code, §341.033(d); to collect routine distribution water samples for coliform analysis and failed to timely provide public notification regarding the failure to sample for the month of October 2012; PENALTY: \$338; ENFORCEMENT COORDINATOR: Lisa Arneson, (512)293-1160; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: City of Angleton; DOCKET NUMBER: 2013-0299-PWS-E; IDENTIFIER: RN103779021; LOCATION: Angleton, Brazoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide the results of triennial mineral sampling to the executive director; 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 §290.122(c)(2), by failing to provide public notification regarding the failure to conduct routine coliform monitoring during the month of September 2011; PENALTY: \$1,683; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL

OFFICE: 5425 Polk Avenue, Suite H Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: City of Austin; DOCKET NUMBER: 2013-0222-MWD-E; IDENTIFIER: RN101607794; LOCATION: Austin, Travis County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Texas Pollutant Discharge Elimination System Permit Number WQ0010543012, Permit Conditions Number 2.g., 30 TAC §305.125(1), and TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of wastewater from the collection system into water in the state; PENALTY: \$7,500; Supplemental Environmental Project offset amount of \$7,500 applied to Travis Audubon Society; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: P.O. Box 13087 Austin, Texas 78711-3087, (512) 339-2929.

(10) COMPANY: City of Bynum; DOCKET NUMBER: 2011-0578-MWD-E; IDENTIFIER: RN101612943; LOCATION: Bynum, Hill County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization for the discharge of wastewater; and 30 TAC §21.4 and TWC, §5.702, by failing to pay outstanding Consolidated Water Quality Assessment fees for Account Number 23002893 for Fiscal Year 2011; PENALTY: \$8,300; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: City of Edgewood; DOCKET NUMBER: 2012-1597-MWD-E; IDENTIFIER: RN105239313; LOCATION: Edgewood, Van Zandt County; TYPE OF FACILITY: public water supply; RULE VIOLATED: TWC, §26.121(a)(1) and 30 TAC, §305.65 and §305.125(2), by failing to maintain authorization to discharge filter backwash wastewater; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: City of Hackberry; DOCKET NUMBER: 2011-2180-MWD-E; IDENTIFIER: RN102077054; LOCATION: Hackberry, Denton County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013434001 Interim's I and II Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6 by failing to comply with the permitted effluent limitations; 30 TAC §305.125(1), and TPDES Permit Number WQ0013434001 Monitoring and Reporting Requirements Number 7.c, by failing to submit noncompliance notifications for any effluent violation which deviated from the permitted effluent limitation by more than 40% to the TCEQ Dallas/Fort Worth Regional Office and the Enforcement Division; and 30 TAC §305.125(1) and §319.5(b), and TPDES Permit Number WQ0013434001 Monitoring and Reporting Requirements Number 1, by failing to collect and analyze samples for required parameters at the minimum frequency specified in the permit; PENALTY: \$32,475; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2309 Gravel Drive Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: City of Higgins; DOCKET NUMBER: 2013-0703-PWS-E; IDENTIFIER: RN101216398; LOCATION: Higgins, Lipscomb County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 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 coliform sample collected in the month of December 2012; 30 TAC §290.109(c)(2)(F), by failing to collect at least five routine distribution coliform samples

in the month following a total coliform-positive result for the month of January 2013; and 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.031(a), by failing to comply with the maximum contaminant level for total coliform during the month of November 2012; PENALTY: \$495; ENFORCEMENT COORDINATOR: Lisa Arneson, (512) 239-1160; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(14) COMPANY: City of Jefferson; DOCKET NUMBER: 2013-0349-PWS-E; IDENTIFIER: RN101221471; LOCATION: Jefferson, Marion County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c)(8), by failing to ensure that the facility's elevated storage tanks are painted, disinfected, and maintained in strict accordance with current American Water Works Association standards; and 30 TAC §290.44(h)(1)(A), by failing to install a backflow prevention assembly or an air gap at all residences or establishments where an actual or potential contamination hazard exists, as identified in 30 TAC §240.47(i); PENALTY: \$4,900; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: City of Queen City; DOCKET NUMBER: 2010-1244-MLM-E; IDENTIFIER: RN101388858; LOCATION: Queen City, Cass County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §290.113(f)(4), Texas Health and Safety Code, §341.0315(c), TCEQ Agreed Order Docket Number 2009-0515-PWS-E, Ordering Provision Numbers 2.a and 2.b, by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on a running annual average; TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0011225001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and TCEQ Agreed Order Docket Number 2005-0658-MLM, by failing to comply with permitted effluent limits; PENALTY: \$81,400; Compliance Supplemental Environmental Project offset amount of \$81,400 applied to Waste Water Treatment Construction Project; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: City of Walnut Springs; DOCKET NUMBER: 2013-0410-MWD-E; IDENTIFIER: RN101918472; LOCATION: Walnut Springs, Bosque County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0013436001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, by failing to comply with permitted effluent limitations; PENALTY: \$12,687; Compliance Supplemental Environmental Project offset amount of \$10,150 applied to Chlorine Contact Chamber; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: CJB Construction, Incorporated; DOCKET NUMBER: 2013-0648-AIR-E; IDENTIFIER: RN106585359; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: air curtain incinerator; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization to operate a source of air emissions; and 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit; PENALTY: \$4,374; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Colony Associates, LLC; DOCKET NUMBER: 2013-0561-PWS-E; IDENTIFIER: RN101254654; LOCATION:

Spring, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide the results of annual nitrate monitoring to the TCEQ's executive director for the 2008-2012 monitoring periods; 30 TAC §290.122(c)(2)(A), by failing to provide public notification for failing to conduct coliform monitoring for the month of December 2010; PENALTY: \$505; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Connel Oil Corp. dba Mr C Food Store 3; DOCKET NUMBER: 2012-2586-PST-E; IDENTIFIER: RN102363348; LOCATION: Monahans, Ward 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: \$3,375; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706 (432) 570-1359.

(20) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2012-2598-AIR-E; IDENTIFIER: RN102420684 and RN102414273; LOCATION: Howard, Glasscock County; TYPE OF FACILITY: central tank batteries; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Texas Health and Safety Code (THSC), §382.085(b), and New Source Review Permit Number 19070, Special Conditions Number 1, by failing to comply with the allowable hourly emissions rates at the Settles Central Tank Battery Flare, Emission Point Number 7; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain the proper authorization for the Settles West Central Tank Battery; PENALTY: \$3,188; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 9900 West IH-20, Suite 100 Midland, Texas 79706, (432) 570-1359.

(21) COMPANY: CYPRESS PINE INVESTMENTS, INCORPORATED dba Lake Houston Marina; DOCKET NUMBER: 2012-2560-PST-E; IDENTIFIER: RN101798825; LOCATION: Huffman, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$7,943; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2013-0671-AIR-E; IDENTIFIER: RN100216613; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review Permit Number 3131A, Special Conditions Number 1, and Federal Operating Permit (FOP) Number O2449, Special Terms and Conditions (STC) Number 8, by failing to prevent unauthorized emissions. Since this emissions event could have been avoided with better maintenance practices and was reported late, the respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; and 30 TAC §101.201(a)(1)(B) and §122.143(4), THSC, §382.085(b), and FOP Number O2449, STC Number 2F, by failing to submit an initial notification for Incident Number 177950 within 24 hours of the discovery of the emissions event; PENALTY: \$25,400; Supplemental Environmental Project offset amount of \$12,700 applied to Texas Association of Resource Conservation and Development

Areas, Incorporated-Clean School Buses; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(23) COMPANY: HYDRO CONDUIT OF TEXAS, LP; DOCKET NUMBER: 2013-0516-PWS-E; IDENTIFIER: RN101227676; LOCATION: Sealy, Austin County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to timely provide the results of annual nitrate/nitrite monitoring to the executive director for the 2009-2012 monitoring periods; PENALTY: \$200; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: INDUSTRIAL GOLD RUSH LTD. dba Fuel City II; DOCKET NUMBER: 2013-0491-PST-E; IDENTIFIER: RN101566479; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(4) and (6) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for inspection upon request by agency personnel; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor recovery system at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification; PENALTY: \$9,534; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: INVISTA S.a.r.l.; DOCKET NUMBER: 2013-0275-AIR-E; IDENTIFIER: RN104244942; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: Federal Operating Permit Number O1908, Special Terms and Conditions Number 15, New Source Review Permit Number 2925, Special Conditions Number 1, 30 TAC §116.115(c) and §122.143(4), and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions. Since the emissions event could have been avoided by better maintenance practices, the respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; PENALTY: \$5,550; Supplemental Environmental Project offset amount of \$2,220 applied to Ambient and Meteorological Air Monitoring; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: National Converting & Packaging Corporation; DOCKET NUMBER: 2013-0178-WQ-E; IDENTIFIER: RN103918280; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: industrial packaging and converting operation; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water runoff associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: THE CANDELARIO & MELISSA ONTIVEROS FAMILY LIMITED PARTNERSHIP dba Medicare EMS; DOCKET NUMBER: 2012-2648-PST-E; IDENTIFIER: RN104812524; LOCATION: McAllen, Hidalgo County; TYPE OF FACILITY: medical facility; 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; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$5,000;

ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619;
REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas
78550-5247, (956) 425-6010.

TRD-201302684

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 25, 2013



Enforcement Orders

An agreed order was entered regarding Precision Processing, Inc., Michael Smith, and Teresa Smith, Docket No. 2011-0311-MSW-E on June 20, 2013 assessing \$8,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc., Docket No. 2011-2070-MWD-E on June 20, 2013 assessing \$19,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A order was entered regarding Custom Water Co., L.L.C., Docket No. 2012-0160-PWS-E on June 24, 2013 assessing \$12,402 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cushing, Docket No. 2012-0658-MWD-E on June 20, 2013 assessing \$158,000 in administrative penalties with \$158,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MANKI LLC, Docket No. 2012-1001-MWD-E on June 20, 2013 assessing \$113,305 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RAHIYA HILLCREST, INC. dba Single Tree 3, Docket No. 2012-1307-PST-E on June 20, 2013 assessing \$9,751 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J.S. BASSI ENTERPRISES INC dba OAK GROVE STORE 2, Docket No. 2012-1439-PST-E on June 20, 2013 assessing \$3,882 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JNK 1ST FOOD, INC. dba 1st Food & Bakery, Docket No. 2012-1732-PST-E on June 20, 2013 assessing \$19,043 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dustin Borrego dba Apache Services, Docket No. 2012-1756-SLG-E on June 20, 2013 assessing \$11,359 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SPEEDY STOP FOOD STORES, LLC dba Speedy Stop 206, Docket No. 2012-1793-PST-E on June 20, 2013 assessing \$43,879 in administrative penalties with \$8,775 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Melva Ramirez, Docket No. 2012-1881-PST-E on June 20, 2013 assessing \$16,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack Calhoun, Docket No. 2012-1948-MSW-E on June 20, 2013 assessing \$1,312 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McWane, Inc. dba Tyler Pipe Company, Docket No. 2012-2063-IWD-E on June 20, 2013 assessing \$24,675 in administrative penalties with \$4,935 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Randy L. Snapp dba Fredericksburg Kampgrounds of America, Docket No. 2012-2128-PWS-E on June 20, 2013 assessing \$968 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mustafa Chagani dba Daghlas Mart, Docket No. 2012-2129-PST-E on June 20, 2013 assessing \$16,824 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CAR SPA, INC. dba Car Spa 022, Docket No. 2012-2130-PST-E on June 20, 2013 assessing \$10,100 in administrative penalties with \$2,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alberto Suarez dba Berts Quik Stop, Docket No. 2012-2192-PST-E on June 20, 2013 assessing \$4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Asmara Enterprises, Inc. dba Country Express Exxon, Docket No. 2012-2334-PST-E on June 20, 2013 assessing \$8,961 in administrative penalties with \$1,792 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pyote, Docket No. 2012-2347-PWS-E on June 20, 2013 assessing \$1,620 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Montgomery County Utility District No. 2, Docket No. 2012-2427-MWD-E on June 20, 2013 assessing \$10,062 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rogers, Docket No. 2012-2451-MWD-E on June 20, 2013 assessing \$13,188 in administrative penalties with \$2,637 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alldoc's, Inc. dba All Doc's, Docket No. 2012-2526-PST-E on June 20, 2013 assessing \$7,630 in administrative penalties with \$1,526 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEMPE WATER SUPPLY CORPORATION, Docket No. 2012-2575-PWS-E on June 20, 2013 assessing \$842 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TA Operating LLC dba Petro Stopping Center 350, Docket No. 2012-2665-PST-E on June 20, 2013 assessing \$10,350 in administrative penalties with \$2,070 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MLK Retail Corporation dba MLK Food Mart, Docket No. 2012-2697-PST-E on June 20, 2013 assessing \$9,416 in administrative penalties with \$1,883 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Moulton, Docket No. 2012-2730-MWD-E on June 20, 2013 assessing \$12,325 in administrative penalties with \$2,465 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201302702

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 26, 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 **August 5, 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 August 5, 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: 4 H INC d/b/a Western Food; DOCKET NUMBER: 2013-0618-PST-E; TCEQ ID NUMBER: RN101834554; LOCATION: 6301 North Dixie Boulevard, Odessa, Ector 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 the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$7,500; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5406, (432) 570-1359.

(2) COMPANY: Ampelio Vargas d/b/a Los Dos Patrones Taqueria and Abelina Vargas d/b/a Los Dos Patrones Taqueria; DOCKET NUMBER: 2012-2048-PWS-E; TCEQ ID NUMBER: RN101247302; LOCATION: 2272 Highway 36 North, Sealy, Austin County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis for the month of July 2011, and failing to provide public notice of the failure to sample; 30 TAC §290.122(c)(2)(B), by failing to provide public notification regarding the failure to conduct routine coliform monitoring during the month of October 2010; 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite monitoring to the executive director for the 2010 reporting period; THSC, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis for the months of September 2011, November 2011, December 2011, January 2012, March 2012, and April 2012, and by failing to provide public notice of the failures to sample; 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite monitoring to the executive director for the 2011 reporting period; 30 TAC §290.106(e), by failing to provide the results of triennial minerals monitoring to the executive director for the monitoring period from January 1, 2009 - December 31, 2011, reporting period; 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees, including late fees, for TCEQ Financial Administration Account Number 90080050 for fiscal year 2012; PENALTY: \$3,004; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: HAKRO INVESTMENTS LLC d/b/a Flip In Market; DOCKET NUMBER: 2012-0887-PST-E; TCEQ ID NUMBER: RN101539963; LOCATION: 5860 South Dick Price Road, Kennedale, Tarrant 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), (2), (2)(A)(i)(III), and (d)(1)(B)(ii), 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 provide release detection for the piping associated with the USTs (the annual piping tightness test was not conducted), by failing to test the line leak detectors at least once per year for performance and operational reliability, and failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of

the total substance flow-through for the month plus 130 gallons; TWC, §26.3475(d) and 30 TAC §334.49(b)(2), by failing to provide corrosion protection to all underground metal components of a UST system which is designed or used to convey, contain, or store regulated substances; and Texas Health and Safety Code, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II vapor recovery system at least once every 12 months; PENALTY: \$13,876; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Katy Independent School District; DOCKET NUMBER: 2012-1160-PST-E; TCEQ ID NUMBER: RN102468121; LOCATION: 5364 Franz Road, Katy, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and fleet refueling facility; RULES VIOLATED: 30 TAC §334.72, by failing to report to the TCEQ a suspected release within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: \$13,500, Supplemental Environmental Project offset amount of \$13,500 applied to Hurricane Ike Habitat Restoration and Removal of Invasive Species; Harris County; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: KHALIL TEX FOOD MART, L.L.C. d/b/a Kids 2000; DOCKET NUMBER: 2012-152-PWS-E; TCEQ ID NUMBER: RN101262194; LOCATION: 12815 Huffmeister Road, Cypress, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite monitoring, to the TCEQs executive director for the 2008-2011 reporting periods; 30 TAC §290.107(e), by failing to provide the results of the six year monitoring for synthetic organic contaminants to the TCEQs executive director for the six year reporting period from January 1, 2003 - December 31, 2008; 30 TAC §290.106(e), 290.107(e) and 290.113(e), by failing to provide the results of triennial sampling for volatile organic contaminants, Stage 1 disinfectant byproducts and mineral levels to the TCEQs executive director; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees for TCEQ Financial Administration Account Number 91012681 for fiscal years 2004-2012; PENALTY: \$800; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: R & S Brothers LLC d/b/a Discount Self Service 2; DOCKET NUMBER: 2013-0108-PST-E; TCEQ ID NUMBER: RN101444628; LOCATION: 4301 Broadway Avenue, Haltom City, Tarrant 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 the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.74, by failing to investigate a suspected release of regulated substances within 30 days of discovery; and 30 TAC §334.50(d)(9)(A)(v), by failing to report a suspected release within 72 hours of discovery; PENALTY: \$59,850; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: T BREAK INC. DBA Texaco Station; DOCKET NUMBER: 2013-0607-PST-E; TCEQ ID NUMBER: RN102267960;

LOCATION: 500 East 15th Street, Plano, Collin 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 the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$7,500; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Westex Capital, LTD. d/b/a Pico 4 and d/b/a Pico 7; DOCKET NUMBER: 2012-2067-PST-E; TCEQ ID NUMBER: RN105213847 and RN102993870; LOCATION: 301 North Street, Carrizo Springs, Dimmit County (Pico 4); and 9110 North State Highway 16, Poteet, Atascosa County (Pico 7); TYPE OF FACILITY: underground storage tank (UST) systems and convenience stores 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 for Pico 4 and Pico 7; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personal for Pico 4 and Pico 7; PENALTY: \$14,000; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201302686
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 25, 2013



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 **August 5, 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 August 5, 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: All American Septic LLC; DOCKET NUMBER: 2012-1461-SLG-E; TCEQ ID NUMBER: RN106303985; LOCATION: 8514 Pines Place Drive, Humble, Harris County; TYPE OF FACILITY: registered sludge transporter business; RULES VIOLATED: TWC, §26.121(a), by failing to prevent the discharge of septage into or adjacent to water in the state; 30 TAC §312.4(d), by failing to obtain a registration from the TCEQ before application of domestic septage at an unauthorized facility; 30 TAC §312.145(c)(2), by failing to submit to the executive director of the TCEQ a letter describing a significant discrepancy with the operator of the disposal facility, any attempts to reconcile the discrepancy, and a copy of the trip ticket; and 30 TAC §312.145(b)(1), by failing to return a copy of the trip ticket to the generator within 15 days after the waste was received at the disposal facility; PENALTY: \$8,666; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Jesus Montoya dba Montoyas Sandblasting; DOCKET NUMBER: 2011-2251-AIR-E; TCEQ ID NUMBER: RN105732218; LOCATION: 107 Thompson Street, Trinity, Trinity County; TYPE OF FACILITY: surface coating and dry abrasive cleaning facility; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a), §382.085(b), and 30 TAC §116.110(a), by failing to obtain authorization prior to conducting surface coating and dry abrasive cleaning operations; PENALTY: \$2,625; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (403) 403-4023; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201302687
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 25, 2013



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 overflow 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 overflow 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 compli-

ance; 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 **August 5, 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 August 5, 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: Benanee Corporation d/b/a Express Lane Food Mart; DOCKET NUMBER: 2012-2476-PST-E; TCEQ ID NUMBER: RN103038709; LOCATION: 15164 Highway 3, Webster, Harris 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 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: \$9,000; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Sardinia Group, Inc. d/b/a Super Z Food Store; DOCKET NUMBER: 2013-0036-PST-E; TCEQ ID NUMBER: RN105021463; LOCATION: 115 Robb Drive, Trinity, Trinity 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 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 for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$8,882; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201302688

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 25, 2013

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Notice of Water Quality Applications

The following notices were issued on June 14, 2013 through June 21, 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

SANDERSON FARMS INC which proposes to operate a poultry processing facility, has applied for new permit Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005013000 to authorize the discharge of process wastewater and utility wastewater at a daily average flow not to exceed 2,180,000 gallons per day via Outfall 001. The facility is located at the end of the nameless road on the north side of Florence Street, approximately 0.3 mile west of the intersection of Florence Street and West Point Tap Road, southwest of the City of Palestine, Anderson County, Texas 75801.

ORBIT SYSTEMS INC has applied for a renewal of TPDES Permit No. WQ0012420001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 17,500 gallons per day. The facility is located at 120 County Road 547C, Angleton, on the southwest quadrant of the intersection of County Road 213 and County Road 547, approximately two miles east of the city of Angleton in Brazoria County, Texas 77515.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 405 has applied for a renewal of TPDES Permit No. WQ0014448001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 550,000 gallons per day. The facility is located at 26830 1/2B Mallard Crossing Drive, Hockley, approximately 1.5 miles south-southeast of the intersection of US Highway 290 and Hegar Road and approximately 0.25 mile east of Warren Ranch Road in Harris County, Texas 77447.

SURFACE RESOURCES INC has applied for a new permit, proposed TPDES Permit No. WQ0015070001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day. The facility will be located east of State Highway 99, and approximately 3,680 feet west of the intersection of Farm-to-Market Road 3180 and Farm-to-Market Road 2354 in Chambers County, Texas 77523. 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.

BASF Corporation which operates BASF Beaumont, an agricultural herbicides manufacturing facility, has applied for a major amendment to TPDES Permit No. WQ0001169000 to authorize the removal of treated domestic wastewaters and the associated monitoring requirements of dissolved oxygen, carbonaceous biochemical oxygen demand (5-day), ammonia, and chlorine residual from Outfall 001; to change the sampling type for chemical oxygen demand and 3,6-dichloro-o-anisic acid at Outfall 001 from composite to grab samples in order to be consistent with Outfalls 002 and 003; to reduce the monitoring frequency for flow at Outfall 001 from once per operating shift to once per week; to change the sampling location for Outfall 001 to read "At Outfall 001, at the northeast corner of the storage ponds, on the east side of the company property prior to discharging into the roadside drainage ditch;" and to remove monitoring requirements for

2,4-dichlorophenoxyacetic acid at Outfalls 001, 002, and 003. The existing permit authorizes the discharge of stormwater from non-process areas, river water treatment backwash, uncontaminated hydrostatic test waters, uncontaminated steam condensate, potable line flushing, other uncontaminated utility waters, and treated domestic wastewater on an intermittent and flow variable basis via Outfall 001; stormwater from non-process areas, river treatment backwash, uncontaminated hydrostatic test waters, uncontaminated steam condensate, potable line flushing water, and other contaminated utility waters on an intermittent and flow variable basis via Outfall 002; and stormwater from non-process areas, river treatment backwash, uncontaminated hydrostatic test waters, uncontaminated steam condensate, potable line flushing water, other utility waters, and drainage from experimental rice fields wastewater on an intermittent and flow variable basis via Outfall 003. The facility is located approximately two miles northwest of the Jefferson County Airport, on the west side of West Port Arthur Road, approximately five miles south of Cardinal Drive in the City of Beaumont, Jefferson County, Texas 77705. 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 General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

JSW STEEL USA INC which operates JSW Steel (USA) Inc., a facility that manufactures carbon steel plate and carbon steel pipe by heating and rolling slabs into sheets and pipes, has for a renewal of TPDES Permit No. WQ0001332000, which authorizes the discharge of stormwater runoff and previously monitored effluents (treated domestic wastewaters at a daily average flow not to exceed 96,000 gallons a day via Internal Outfall 101 and treated cooling and descaling water from plate mills, washwater from carbon steel pipe operations, and cooling tower blowdown at a daily average flow not to exceed 500,000 gallons per day via Internal Outfall 201) on an intermittent and flow variable basis via Outfall 001. The facility is located at 5200 East McKinney Road, one-mile east of the intersection of Farm-to-Market Road 1405 and East McKinney Road, approximately five miles southeast of the City of Baytown, Chambers County, Texas 77523.

JACKIE DIANE POWELL which operates a scrap automobile and metal processing facility, has applied for a renewal of TPDES Permit No. WQ0003007000, which authorizes the discharge of stormwater at an intermittent and flow variable rate. The Best American Facility is located at 5417 North McCarty Road, in the City of Houston, Harris County, Texas 77013.

ANTHONY FOREST PRODUCTS COMPANY which operates Anthony Forest Products - Atlanta Facility WWTP, a saw mill, has for a renewal of TPDES Permit No. WQ0003811000, which authorizes the discharge of wet decking wastewater, truck washwater, process area and non-process area stormwater runoff on an intermittent and flow variable basis via Outfall 001; process area and non-process area stormwater runoff, boiler blowdown, and fire control water on an intermittent and flow variable basis via Outfall 002; and process area and non-process area stormwater runoff on an intermittent and flow variable basis via Outfall 003. The facility is located at 515 South Louise Street, in the City of Atlanta, Cass County, Texas 75551.

MULTI CHEM GROUP LLC which operates the Multi-Chem Group Sonora Texas Facility, a chemical blending, storage, and distribution facility, has applied for a new permit, draft TPDES Permit No. WQ0005001000, to authorize the discharge of stormwater on an intermittent and flow variable basis via Outfalls 001 and 002 and reverse osmosis reject water at a daily average flow not to exceed 3,000 gallons per day via Outfall 003. The facility is located at 349 Private Road 4473, approximately 2.5 miles southwest of the City of

Sonora and about 0.35 mile northwest of the intersection of Private Road 4473 and U.S. Highway 277 in Sutton County, Texas 76950.

CITY OF WALLER has applied for a renewal of TPDES Permit No. WQ0010310001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 102 Walnut Street, approximately 4,500 feet southeast of the intersection of U.S. Highway 290 and Farm-to-Market Road 362 in Waller County, Texas 77484.

GALVESTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 12 has applied for a renewal of TPDES Permit No. WQ0012039001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located at 524 Cien Road, approximately 500 feet east of State Highway 146 and approximately 2,500 feet southeast of the intersection of Farm-to-Market Road 518 and State Highway 146, Kemah in Galveston County, Texas 77565.

ORBIT SYSTEMS INC has applied for a renewal of TPDES Permit No. WQ0012113001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 7132 Green Tree Drive, approximately 0.5 mile west of State Highway 288B, approximately 2,800 feet southwest of the intersection of State Highway 288B and Beachwood Drive, and approximately 3.5 miles north of the City of Angleton in Brazoria County, Texas 77515.

CITY OF SHENANDOAH has applied for a renewal of TPDES Permit No. WQ0012212002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 302 Ed English Drive, approximately 800 feet east of Interstate Highway 45 and 4,000 feet north of Tamina Road in the City of Shenandoah in Montgomery County, Texas 77385.

MONARCH UTILITIES I LP has applied for a renewal of TPDES Permit No. WQ0012587001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 460,000 gallons per day. The facility is located at 29801 Wichita Falls Street, Magnolia in Montgomery County, Texas 77354.

ORBIT SYSTEMS INC has applied for a renewal of TPDES Permit No. WQ0012672001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The facility is located at 1302 Airline North, Rosharon, approximately 0.50 mile south of Farm-to-Market Road 1462 and 1.5 miles west of State Highway 288 in Brazoria County, Texas 77583.

AQUA UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0012822001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located approximately 2,300 feet south of County Road 128 and approximately 2,500 feet east of County Road 143, Alvin in Brazoria County, Texas 77511.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 89 has applied for a renewal of TPDES Permit No. WQ0012939001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 4055 Fellows Road, approximately 3,600 feet west of the intersection of Fellows Road and Farm-to-Market Road 518 (Cullen Boulevard) in Harris County, Texas 77047.

AQUA UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0014324001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 7839 South Hampton Drive, approximately 1,000 feet northwest of the intersection of Brazoria County

Road 197 and Brazoria County Road 171 near Liverpool in Brazoria County, Texas 77511.

CITY OF SANGER has applied for a renewal of TPDES Permit No. WQ0014372001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day. The facility is located at 300 Jones Street, approximately 1,000 feet south of Jones Street, and approximately 1,500 feet east of the Burlington Northern Santa Fe Railroad in Denton County, Texas 76266.

NORTHLAKE PARTNERS, LTD has applied for a renewal of TPDES Permit No. WQ0014484001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located at 13001 Cleveland Gibbs Road on the north side of the Northlake Village Mobile Home Park, approximately 1,350 feet north of Sam Lee Road in Roanoke, Denton County, Texas 76262.

THE CITY OF LAVON has applied for a renewal of TPDES Permit No. WQ0014577001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located at 10551 County Road 484, approximately 4,600 feet southeast of the intersection of County Road 205 and State Highway 78 and approximately 6,800 feet southwest of the intersection of County Road 483 and Farm-to-Market Road 2755 (Main Street) in Collin County, Texas 75166.

WALTON TEXAS LP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015080001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility will be located 2,600 feet southeast of the intersection of State Highway 130 and State Highway 21 in Caldwell County, Texas 78644.

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.

LOWER COLORADO RIVER AUTHORITY which operates the Thomas C. Ferguson Power Plant, has applied for a minor amendment to TPDES Permit No. WQ0001369000 to relocate internal Outfalls 101 and 201, eliminate internal Outfall 301, and remove irrigation as an authorized use at internal Outfall 401. The existing permit authorizes the discharge of once through cooling water, auxiliary cooling water, stormwater, and previously monitored effluents (low volume waste sources from the neutralization basin; low volume waste sources from the API Separator, basement underdrain, and other sources; stormwater from the diked oil storage area; and metal cleaning waste and/or low volume waste sources by a combination of evaporation and infiltration) at a daily average flow not to exceed 435,000,000 gallons per day via Outfall 001. The facility is located at 2001 Ferguson Road, adjacent to Lake Lyndon B. Johnson, approximately 7 miles west of the City of Marble Falls, and approximately 1 mile north of Ranch Road 2147, Horseshoe Bay, Llano County, Texas 78657.

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 (10) DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor modification of TPDES Permit No. WQ0002733000 issued to Farco Mining, Inc., which operates Palafox

Mine, to correct a typographical error in the location description of the facility, by changing "Farm-to-Market Road 3388" to "Farm-to-Market Road 3338." The existing permit authorizes the discharge of stormwater from the post-mining area on an intermittent and flow variable basis via Outfalls 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, and 011. The facility is located northwest of the City of Laredo, to a point just west of and adjacent to Farm-to-Market 1472 that is approximately 24.75 miles northwest of the intersection of Farm-to-Market Road 1472 and Farm-to-Market Road 3338 and five miles northwest of the intersection of Farm-to-Market Road 1472 and La Mesa Ranch Road, in Webb County, Texas 78045.

TRD-201302700
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 26, 2013



Notice of Water Rights Application

Notice issued June 14, 2013.

APPLICATION NO. 5715A; Lower Colorado River Authority (LCRA), P.O. Box 220, Austin, Texas 78767, Applicant, seeks to amend Water Use Permit No. 5715 to amend a Special Condition relating to instream flow rates on the Colorado River based upon findings in a site specific study for subsequent diversion and use in the Lometa Water System for municipal purposes in Lampasas County in the Colorado River Basin and the Brazos River Basin. The application and partial fees were received on November 8, 2010. Additional information and fees were received on May 4, 2011, February 10, and October 10, 2012 and October 26, 2012. The application was declared administratively complete and accepted for filing on November 4, 2011. The TCEQ Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to streamflow restrictions. The application and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F., Austin, Texas 78753. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201302701

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 26, 2013

Texas Ethics Commission

List of Late Filers

Listed below is the name of a filer from the Texas Ethics Commission who did not file a report, or failed to pay the penalty fine for the late report in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5780.

Deadline: Personal Financial Statement due April 30, 2013

Virginia H. Boissonneault, 9104 Colberg Dr., Austin, Texas 78749

David A. Canales, P.O. Box 592055, San Antonio, Texas 78529

Gregory D. Compean, 13307 Benetonwood Lane, Houston, Texas 77077

Chet D. Creel, P.O. Box 203, Newcastle, Texas 76372

John P. Dineen III, 5602 FM 877, Waxahachie, Texas 75165

Ruben Gallegos, 1850 Briarwyck Dr., Brownsville, Texas 78520

Christopher Gilbert, 1629 W. Alabama St., Houston, Texas 77006

Bonnie C. Hellums, P.O. Box 2404, Houston, Texas 77252

Carla S. Hoffman, 6468 Holly Rd., Corpus Christi, Texas 78412

Richard Holland, 3709 Watercrest Dr., Plano, Texas 75093

Daniel J. Kindred, 1670 FM 2676, Hondo, Texas 78861

Ronnie Kramer, 11525 Church Canyon Dr., Austin, Texas 78754

Ronald V. Larson, 15342 Fairwood Ct., Horizon City, Texas 79928

Christie McAdams Leedy, 40 Pinehurst St., Austin, Texas 79606

Benjamin W. Norris, 157 Woodforest Dr., Elm Mott, Texas 76640

Alan K. Sandersen, 2827 Winter Lakes, Missouri City, Texas 77459

Jeff Sandford, 819 N. State Line Ave., Texarkana, Texas 75501

Whitney Thompson Smith, P.O. Box 1356, Normangee, Texas 77871

Adair R. Sutherland, P.O. Box 123, Goliad, Texas 77963

Andrew Watley, P.O. Box 51, Spearman, Texas 79081

Deadline: Monthly Report due May 6, 2013, for Committees

Kevin Cox, Grand Prairie Police Association PAC, P.O. Box 531184, Grand Prairie, Texas 75053-1184

Peter Hwang, Houston 80-20 PAC, 8300 Bender Rd., Humble, Texas 77396-2309

TRD-201302575

David A. Reisman

Executive Director

Texas Ethics Commission

Filed: June 20, 2013

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 projects during the period of June 18, 2013 - June 24, 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 General Land Office's web site. The notice was published on the web site on June 26, 2013. The public comment period for this project will close at 5:00 p.m. on July 26, 2013.

FEDERAL AGENCY ACTIONS

Applicant: MARMAC, LLC, dba McDonough Marine Services

Location: The project site is located along the Houston Ship Channel (HSC) and San Jacinto Tidal Basin, at 17500 Market Street, in Channelview, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Highlands, Texas. Latitude: 29.78945 North; Longitude -95.079729 West.

Project Description: The applicant proposes to modify Department of the Army Permit 19601(04) to dredge a 15-acre area within the McDonough Marine Services facility. The proposed method of dredging is mechanical and/or hydraulic depending on the location of the placement area secured. Approximately 96,000 cubic yards of materials will be removed and placed at Lost Lake Dredged Material Placement Area or the East and West Spoil Area within the applicant's facility. The area will be dredged from inconsistent depths ranging from 0 to -5, to a uniform depth of -10 mean low lower water. The purpose of the project is to accommodate larger vessels at the facility.

CMP Project No.: 13-1174-F1.

Type of Application: This application is being evaluated under §10 of the Rivers and Harbors Act of 1899.

Applicant: Kirbly Inland Marine, L.P

Location: The project site is located in Carpenters Bayou and the Houston Ship Channel, at 164021/2 DeZavalla Road, Channelview, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: TX-HIGHLANDS, Texas. Latitude: 29.7589 North; Longitude -95.0957 West.

Project Description: The applicant proposes to replace an existing geotextile tube (geotube) that provides bank stabilization for an existing

barge terminal. The applicant is proposing to place a new 550-linear-foot geotube in front of the existing geotube, and then would back-fill behind the new geotube with approximately 1,800 cubic yards of compacted sand. The applicant is also proposing to install a 20- by 25-foot riprap scour pad at the discharge point of an existing outfall structure which would be extended so that it would outfall beyond the newly proposed geotube. The project would result in the discharge of fill material into approximately 0.2 acre of Waters of the U.S. The applicant is not proposing to impact wetlands.

CMP Project No.: 13-1050-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2012-00381 is being evaluated under §10 of the Rivers and Harbors Act of 1899 and §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 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-201302713

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: June 26, 2013

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Hospital Inpatient Reimbursement and Hospital Outpatient Reimbursement

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 19, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for hospital outpatient imaging services, hospital outpatient reimbursement, and hospital inpatient reimbursement.

The public hearing will be held in the Department of Aging and Disability Services Public Hearing Room, Winters Building, located at 701 W. 51st Street, Austin, Texas 78751. Entry is through security at the main entrance of the building, which faces 51st Street. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.201, which requires public notice and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates are proposed to be effective September 1, 2013, for the following services:

- Hospital Inpatient Services

- Hospital Outpatient Services

Methodology and Justification. The proposed payment rates were calculated in accordance with the following proposed rules to be published in the *Texas Register* on June 28, 2013 under 1 TAC §355.8052, which addresses payment for inpatient hospital services; 1 TAC §355.8060, which addresses payment for freestanding psychi-

atric facilities; and 1 TAC §355.8061, which addresses payment for outpatient hospital services.

The proposed rules and proposed reimbursement rates reflect adjustments in response to direction received from the 2014-2015 General Appropriations Act (Article II, Senate Bill 1, 83rd Legislature, Regular Session, 2013), including reductions described in the Health and Human Services Rider 51, Medicaid Funding Reduction and Cost Containment; Rider 38, Payments to Rural Hospital Providers; and Rider 71, Inpatient Payments to Children's Hospitals.

Proposed Inpatient Hospital Rates.

- Children's hospitals - A new standard dollar amount (SDA) methodology is proposed for reimbursing children's hospitals using a statewide base SDA of \$9,511.06, with hospital specific add-ons for geographic wage differences and for teaching medical education. A one-year phase-in to fully implement this new methodology is proposed.

- Rural hospitals - A new SDA methodology for reimbursing rural hospitals is proposed using a facility specific SDA limited by a floor and a ceiling. The floor will be 1.5 standard deviations below the adjusted average SDA and is proposed to be \$4,533.08; the ceiling will be 2.0 standard deviations above the adjusted average SDA and is proposed to be \$12,968.04.

- Hospitals in Rockwall County - The two hospitals that no longer fit the proposed new definition of a rural hospital are proposed to have a two year phase-in from a rural to an urban hospital for reimbursement.

- Outlier payments - A reduction of 10 percent is proposed for all outlier payments to non-children's hospitals. A cap will be placed on day outliers paid to all hospitals to ensure that the sum of the day outlier and the payment does not exceed the total cost of the claim.

Proposed Outpatient Hospital Rates.

- Outpatient charges - Outpatient allowable charges are proposed to be reduced by four percent except for children's and rural hospitals.

- Outpatient charges for new hospitals - New hospitals are proposed to receive a default interim payment rate of 50 percent, which is applied to allowable charges.

- Outpatient charges for hospitals in Rockwall County - The two hospitals that no longer fit the proposed new definition of a rural hospital are proposed to have a two-year phase-in from a rural to an urban hospital for reimbursement.

- Non-urgent emergency department services - Services provided in the hospital emergency department that do not qualify as an emergency are proposed to be reduced to \$51.36 per visit, which is 125 percent of the adult physician office visit fee. Rural hospitals are not proposed to receive this reduction. Hospitals in Rockwall County are proposed to not receive this reduction until state fiscal year 2016.

- Imaging - Outpatient hospital imaging services will be reimbursed according to an outpatient hospital imaging service fee schedule that is based on a percentage of the Medicare fee schedule for similar services. If a resulting fee is greater than 125 percent of the Medicaid adult acute care fee for a similar service, it is proposed that the fee is reduced to 125 percent of the Medicaid adult acute care fee.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> by July 5, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting the Rate Analysis Department by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at sarah.hambrick@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of HHSC, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis Department at (512) 730-7475; or by e-mail to sarah.hambrick@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC, Rate Analysis Department, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact the Rate Analysis Department at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201302683
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 25, 2013



Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 13-015 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The proposed amendment updates the requirements for providers performing case management services for children enrolled in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program and high risk pregnant women. The requested effective date for the proposed amendment is April 1, 2013. The proposed amendment is not expected to have a fiscal impact on the state or federal budgets.

To obtain copies of the proposed amendment, interested parties may contact Ashley Fox by mail at the Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-100, Austin, Texas 78711; by telephone at (512) 462-6282; by facsimile at (512); or by e-mail at ashley.fox@hhsc.state.tx.us. Copies of the proposal also will be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201302703
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 26, 2013



Public Notice

The Texas Health and Human Services Commission announces its intent to issue a Request for Information (RFI) seeking comments regarding the delivery of Non-Emergency Medical Transportation (NEMT) services for eligible Medicaid clients, Children with Special Health Care Needs, and Indigent Cancer Patients living in South Texas. Pursuant to Senate Bill 8, 83rd Legislature, Regular Session, 2013, the delivery of NEMT services through the Medical Transportation Program will be by Medical Transportation Organizations (MTO) utilizing a managed transportation delivery model beginning September 1, 2014.

The purpose of this RFI is to: (i) provide prospective vendors and other interested parties with an opportunity to identify and address issues related to providing NEMT services under the new MTO model; (ii)

identify potential challenges associated with an aggressive implementation schedule; (iii) assist the agency in determining what considerations should be taken into account when developing MTO regions; (iv) advise about the potential for developing regional transportation partnerships and adequacy of available transportation in proposed MTO regions; and (v) assist the agency with identifying issues to consider when calculating the per member per month (PMPM) capitated rate for proposed MTO regions.

To obtain copies of the Request for Information or to submit written comments, interested parties may contact Rick Blincoe, Enterprise Contract and Procurement Services, by mail at Enterprise Contract and Procurement Services Department, Texas Health and Human Services Commission, 4405 N. Lamar, Austin, Texas 78756; by telephone at (512) 206-5468; or by e-mail at richard.blincoe@hhsc.state.tx.us. Copies of the RFI documents will also be made available for public review on the HHSC web site Business Opportunities page at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.asp.

TRD-201302704
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 26, 2013



Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 13-016 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The proposed amendment demonstrates compliance with 42 CFR §447.26 and 42 USC §1396a(a)(19), (30) and §1396b-1 with respect to adjustment for potentially preventable readmissions.

Senate Bill 7, 82nd Texas Legislature, and First Called Session, 2011, and the reporting as directed by House Bill 1218 from the 81st Legislature Regular Session, 2009, requires HHSC to identify potentially preventable readmissions (PPR) in the Medicaid population and confidentially report the results to each hospital annually for distribution to its health care providers. The law also requires HHSC to implement quality-based payments to hospitals on the basis of the results of the PPR analysis. This proposed amendment defines the methodology for applying the required PPR rate adjustments. A hospital with an actual-to-expected ratio between 1.10 and 1.25 for PPRs is subject to a reimbursement adjustment of 1%. A hospital with an actual-to-expected ratio greater than 1.25 for PPRs is subject to a reimbursement adjustment of 2%. The proposed amendment is effective May 1, 2013.

The proposed amendment is estimated to result in a cost savings of (\$1,979,919) for the remainder of federal fiscal year (FFY) 2013, consisting of (\$1,174,092) savings in federal funds and (\$805,827) cost savings for state general revenue. For FFY 2014, the estimated cost savings is (\$5,000,000) consisting of (\$2,934,500) cost savings in federal funds and (\$2,065,500) cost savings in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Ashley Fox by mail at the Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-100, Austin, Texas 78711; by telephone at (512) 462-6282; by facsimile at (512) 730-7472; or by e-mail at ashley.fox@hhsc.state.tx.us. Copies of the proposal also will be made available for public review at the local offices of the Department of Aging and Disability Services.

TRD-201302711



Revision to Notice of Public Hearing on Proposed Medicaid Payment Rates for Supported Employment, Employment Assistance and Consumer Directed Services

Hearing. The Texas Health and Human Services Commission is revising the notice, published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4217), pertaining to the public hearing which is to be held on July 16, 2013, at 8:30 a.m. to receive public comment on proposed rates for employment assistance (EA) for the Community Based Alternatives (CBA), Community Living Assistance and Support Services (CLASS), Home and Community-based Services (HCS), and Medically Dependent Children Program (MDCP) waiver programs; for supported employment (SE) in the CBA and MDCP waiver programs; for consumer-directed services (CDS) SE and EA in the Deaf-Blind with Multiple Disabilities (DBMD), CBA, CLASS, HCS and MDCP programs; and for CDS nursing services in the HCS program. These programs are operated by the Department of Aging and Disability Services (DADS).

The public hearing notice is being revised to include receiving comment on a proposed rate for SE for the CLASS program.

The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements before HHSC approves such rates. The public hearing will be held in the Public Hearing Room of the John H. Winters Building, located at 701 West 51st Street, Austin, Texas. Entry is through Security at the front of the building facing 51st Street. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes rates for the programs and services listed above. The proposed rates will be effective September 1, 2013, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The proposed payment rates incorporate provisions from Section 1, S.B. 45, 83rd Legislature,

Regular Session, 2013, and directives from HHSC's and DADS's executive staff. HHSC's proposed payment rates were calculated in accordance with the rate setting methodologies codified at 1 TAC Chapter 355, Subchapter A, §355.114, Consumer Directed Services Payment Option; Subchapter E, §355.502, Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers; §355.503, Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs; §355.505, Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program; §355.507, Reimbursement Methodology for the Medically Dependent Children Program; §355.513, Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program; and Subchapter F, §355.723, Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.

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 June 28, 2013. Interested parties also may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at sarah.hambrick@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, Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to sarah.hambrick@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC, Attention: Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2399.

TRD-201302694
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 25, 2013



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	Amendment #	Date of Action
College Station	Scott & White - College Station	L06557	College Station	00	06/03/13

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Anderson	National Oilwell Varco, L.P.	L06094	Anderson	09	06/14/13
Arlington	The University of Texas at Arlington	L00248	Arlington	54	06/11/13
Austin	St. David's Healthcare Partnership, L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	117	06/13/13
Austin	Thermo Finnigan, L.L.C.	L01186	Austin	49	06/05/13
Beeville	Christus Spohn Health System Corporation dba Christus Spohn Hospital Beeville	L04510	Beeville	30	06/12/13
College Station	Scott & White - College Station	L06557	College Station	01	06/13/13
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	197	06/12/13
Dallas	Baylor Radiosurgery Center dba Baylor University Medical Center	L05842	Dallas	18	06/14/13
Denton	University of North Texas Risk Management Services Radiation Safety Office	L00101	Denton	92	06/12/13
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	142	06/04/13
Houston	Baylor College of Medicine	L00680	Houston	109	06/12/13
Houston	Texas Southern University	L03121	Houston	30	06/11/13
Houston	New Medical Horizons II, Ltd. dba Cypress Fairbanks Medical Center	L03424	Houston	38	06/13/13
Houston	Rice University Department of Civil and Environmental Engineering	L04639	Houston	16	06/10/13
Houston	American Diagnostic Tech, L.L.C.	L05514	Houston	92	06/10/13
Houston	Houston Cyclotron Partners, L.P. dba Cyclotope	L05585	Houston	21	06/14/13
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	28	06/13/13
Huntsville	Huntsville Memorial Hospital	L02822	Huntsville	20	06/11/13
Irving	University of Dallas	L01194	Irving	15	06/11/13
Kingsville	Texas A&M University Kingsville	L01821	Kingsville	48	06/13/13
Longview	Good Shepherd Medical Center	L02411	Longview	89	06/12/13
McAllen	Texas Oncology, P.A. dba South Texas Cancer Center at McAllen	L04880	McAllen	15	06/03/13
Pasadena	Pasadena Refining System, Inc.	L01344	Pasadena	33	06/14/13
Plano	Physician Reliance Network, Inc. dba Texas Oncology Plano West Cancer Center	L05896	Plano	22	06/04/13
Port Lavaca	Seadrift Coke, L.P.	L03432	Port Lavaca	27	06/12/13
Queen City	International Paper Company	L01686	Queen City	42	06/06/13
Round Rock	Texas Oncology, P.A.	L06349	Round Rock	07	06/14/13
San Angelo	Shannon Medical Center	L02174	San Angelo	64	06/12/13
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	145	06/11/13
San Antonio	Diabetes and Glandular Disease Clinic, P.A.	L02647	San Antonio	24	06/11/13
San Antonio	IHI Southwest Technologies, Inc.	L05278	San Antonio	17	06/13/13
The Woodlands	St. Luke's Community Health Services dba St. Luke's The Woodlands Hospital	L06370	The Woodlands	04	06/11/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
The Woodlands	St. Luke's Community Health Services dba St. Luke's The Woodlands Hospital	L06370	The Woodlands	05	06/13/13
Throughout TX	Desert NDT, L.L.C. dba Midwest Inspection Services	L06462	Abilene	11	06/13/13
Throughout TX	J-W Wireline Company	L06132	Addison	23	06/14/13
Throughout TX	Weatherford International, L.L.C.	L04286	Benbrook	97	06/11/13
Throughout TX	DMS Health Technologies, Inc.	L05594	Cameron	18	06/05/13
Throughout TX	Professional Service Industries, Inc.	L04940	Dallas	14	06/13/13
Throughout TX	The Dow Chemical Company Texas Operations	L00451	Freeport	93	06/04/13
Throughout TX	Great Guns, Inc.	L01990	Hardin	31	06/14/13
Throughout TX	Centronics, L.L.C.	L06164	Houston	04	06/07/13
Throughout TX	Statewide Maintenance Company dba Diamond G Inspection Inc.	L06229	Houston	08	06/14/13
Throughout TX	Liberty Town USA 2	L06555	Houston	01	06/13/13
Throughout TX	Qisi, Inc. dba Quality Inspection Services	L06219	La Porte	11	06/11/13
Throughout TX	Casedhole Solutions, Inc.	L06356	Midland	06	06/05/13
Throughout TX	Qualspec Services, Inc. dba Qualspec	L06432	Oyster Creek	06	06/11/13
Throughout TX	Techcorr USA, L.L.C. dba AUT Specialists, L.L.C.	L05972	Palestine	96	06/14/13
Throughout TX	Fugro Consultants, Inc.	L04322	Pasadena	108	06/13/13
Throughout TX	Pioneer Wireline Services, L.L.C.	L06220	Rosharon	25	06/07/13
Throughout TX	Ludlum Measurements, Inc.	L01963	Sweetwater	98	06/12/13
Tomball	Northwest Houston Heart Center	L05958	Tomball	14	06/04/13
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	186	06/11/13
Wichita Falls	Kell West Regional Hospital, L.L.C.	L05943	Wichita Falls	11	06/11/13

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
College Station	Scott & White - College Station	L06557	College Station	01	06/13/13

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Jacksonville	Mother Frances Hospital Jacksonville	L05362	Jacksonville	32	06/11/13
Throughout TX	H. H. Holmes Testing Laboratories, Inc.	L06313	Whceling	05	06/07/13

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 injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201302591
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: June 21, 2013

◆ ◆ ◆
Texas Department of Housing and Community Affairs

Announcement of the Opening of the Public Comment Period for the Draft of Phase 2 of the State of Texas Plan for Fair Housing Choice: Analysis of Impediments

The Texas Department of Housing and Community Affairs (the "Department") announces the opening of a 45-day public comment period for the *State of Texas Plan for Fair Housing Choice: Analysis of Impediments* (the AI) before submission to the US Department of Housing and Urban Development (HUD). The 45-day public comment period begins July 5, 2013 and continues through August 19, 2013.

The State of Texas, in its Consolidated Plan, certifies to HUD that it will affirmatively further fair housing. The Department, as the lead affordable housing agency for the State of Texas, periodically prepares an AI for submission to HUD. The topics that are analyzed--demographic data, policies, and practices--shape circumstances that influence the abilities of low-income households to secure decent, safe, and affordable housing. The AI examines actions, omissions, or decisions based on race, color, religion, gender, disability, familial status, or national origin that may directly or indirectly restrict fair housing choices.

Beginning July 5, 2013, the AI will be available on the Department's website at www.tdhca.state.tx.us. A hard copy can be requested by contacting BBC Research & Consulting at 1999 Broadway, Suite 2200, Denver, CO 80202-5742 or by calling (303) 321-2547.

Written comment should be sent by mail to BBC Research & Consulting, 1999 Broadway, Suite 2200, Denver, CO 80202-5742, by email to jgarner@bbcresearch.com, or by fax to (303) 399-0448.

The Department will also be hosting five in-person hearings during which members of the public may give comment. The public hearings will take place in Austin, Fort Worth, Harlingen, Midland, and Nacogdoches. For meeting dates and times, please see <http://www.tdhca.state.tx.us/housing-center/fair-housing/analysis-impediments.htm>.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least five (5) business days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Jorge Reyes, (512) 475-4577, at least five (5) business days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos cinco días laborables antes de la junta para hacer los preparativos apropiados.

TRD-201302697
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 25, 2013



Texas Department of Insurance

Company Licensing

Application to change the name of VISTA LIFE INSURANCE COMPANY to SYMPHONIX HEALTH INSURANCE, INC., a life, accident and/or health company. The home office is in Dearborn, Michigan.

Application for incorporation in the State of Texas by TEXAS HOME INSURANCE COMPANY, a Texas domestic fire and/or casualty company.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201302712
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: June 26, 2013



Texas Juvenile Justice Department

Notice of Public Hearing Regarding Facility Closure

The Texas Juvenile Justice Department (TJJD) will hold a public hearing on July 15, 2013, at 10 a.m., in Salons D and E of the Grand Ballroom at the Crowne Plaza hotel located at 6121 North IH-35, in Austin, Texas. The purpose of the public hearing is to receive public comments on options for closure of one TJJD-operated secure facility.

Rider 35 of TJJD's FY 2014-2015 appropriation states that the agency may operate no more than five secure facilities beginning January 1, 2014. As a result, TJJD must close one existing secure facility prior to that date. TJJD is examining all possible options relating to physical plant and Life Safety Code issues, ongoing maintenance and operating costs, expansion ability, and the agency's ability to safely manage youth populations. The agency staff's recommendations will be posted on www.tjjd.texas.gov in advance of the public hearing. Affected community leaders have been invited to provide testimony regarding the closure options. Approximately 45 minutes will be allotted for this presentation.

A quorum of the TJJD Board may be present at the hearing, however, no business will be conducted and no actions will be taken.

The staff recommendations will be presented for TJJD Board consideration and possible adoption at the Board's July 26, 2013, meeting.

Any interested person or organization may appear and offer comments at the public hearing after the invited testimony. Persons wishing to speak may register in advance by notifying Jeannette Cantu at Jeannette.Cantu@tjjd.texas.gov or (512) 490-7004 before 5:00 p.m. on July 12, 2013, or they may register at the hearing location beginning at 9:00 a.m. on the date of the hearing. Interested persons or organizations will be given approximately three minutes to provide verbal comments. The presiding officer may extend or limit the time allotted for each speaker based on the number of speakers.

Persons requiring special accommodations should contact Jeannette Cantu at Jeannette.Cantu@tjjd.texas.gov or (512) 490-7004 at least three business days in advance of the hearing to allow for appropriate arrangements to be made.

Interested parties who are unable to attend the hearing may submit written comments to Jeannette Cantu at Jeannette.Cantu@tjjd.texas.gov or

P.O. Box 12757, Austin, Texas, 78711. In order to be considered, all written comments must be received by TJJD no later than 5:00 p.m. on July 15, 2013.

TRD-201302714

Brett Bray

General Counsel

Texas Juvenile Justice Department

Filed: June 26, 2013

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Texas Lottery Commission

Instant Game Number 1530 "Black Cherry Tripler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1530 is "BLACK CHERRY TRIPLER." The play style is "slots-straight line."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1530 shall be \$3.00 per Ticket.

1.2 Definitions in Instant Game No. 1530.

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: \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100, \$1,000, \$30,000, LEMON SYMBOL, STACK OF COINS SYMBOL, CLOVER SYMBOL, BELL SYMBOL, STACK OF MONEY SYMBOL, GOLD BAR SYMBOL, HORSESHOE SYMBOL, ANCHOR SYMBOL, CROWN SYMBOL, STAR SYMBOL, CHERRY SYMBOL, THREE DOLLARS SYMBOL, FIVE DOLLARS SYMBOL, TEN DOLLARS SYMBOL, FIFTN DOLLARS SYMBOL, TWENTY DOLLARS SYMBOL, THIRTY DOLLARS SYMBOL, FIFTY DOLLARS SYMBOL, ONE HUN DOLLARS SYMBOL, TRY AGAIN SYMBOL and MAYBE NEXT TIME 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. 1530 - 1.2D

PLAY SYMBOL	CAPTION
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$30.00	THIRTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$30,000	30 THOU
LEMON SYMBOL	LEMON
STACK OF COINS SYMBOL	COINS
CLOVER SYMBOL	CLOVER
BELL SYMBOL	BELL
STACK OF MONEY SYMBOL	MONEY
GOLD BAR SYMBOL	GOLD BAR
HORSESHOE SYMBOL	SHOE
ANCHOR SYMBOL	ANCHOR
CROWN SYMBOL	CROWN
STAR SYMBOL	STAR
CHERRY SYMBOL	TRIPLE
THREE DOLLARS SYMBOL	DOLLARS
FIVE DOLLARS SYMBOL	DOLLARS
TEN DOLLARS SYMBOL	DOLLARS
FIFTN DOLLARS SYMBOL	DOLLARS
TWENTY DOLLARS SYMBOL	DOLLARS
THIRTY DOLLARS SYMBOL	DOLLARS
FIFTY DOLLARS SYMBOL	DOLLARS
ONE HUN DOLLARS SYMBOL	DOLLARS
TRY AGAIN SYMBOL	AGAIN
MAYBE NEXT TIME SYMBOL	NEXT TIME

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, \$5.00, \$9.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$30,000.

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 (1530), 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: 1530-0000001-001.

K. Pack - A Pack of "BLACK CHERRY TRIPLER" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 125 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the

front of the Pack and the front of Ticket 125 will be shown on the back of the Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BLACK CHERRY TRIPLER" Instant Game No. 1530 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "BLACK CHERRY TRIPLER" Instant Game is determined once the latex on the Ticket is scratched off to expose 25 (twenty-five) Play Symbols. If a player reveals 3 matching Play Symbols in the same GAME, the player wins the PRIZE for that GAME. If a player reveals 2 matching Play Symbols and a "CHERRY" Play Symbol in the same GAME, the player wins TRIPLE the PRIZE for that GAME. BONUS: If a player reveals any PRIZE amount Play Symbol, the player wins that PRIZE instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 25 (twenty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut and have exactly 25 (twenty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 25 (twenty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 25 (twenty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to seven (7) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$30,000 will each appear at least once in GAME 1 through GAME 6, except on Tickets winning six (6) times.

E. GAMES 1-6: Players can win up to six (6) times in this play area; once in each GAME.

F. GAMES 1-6: On all Tickets, non-winning Prize Symbols will be different (i.e., No duplicates).

G. GAMES 1-6: The play area consists of eighteen (18) Play Symbols and six (6) Prize Symbols.

H. GAMES 1-6: There will never be three (3) matching symbols in a vertical or diagonal line, unless required for a multiple win.

I. GAMES 1-6: Consecutive Non-Winning Tickets within a Pack will not have identical GAMES. For instance if the first Ticket contains a Lemon, Stack of Coins, Bell in any GAME then the next Ticket may not contain a Lemon, Stack of Coins, Bell in any GAME in any order.

J. GAMES 1-6: Non-Winning Tickets will not have identical games. For example if GAME 1 is Lemon, Stack of Coins, Bell then GAME 2 through GAME 6 will not contain Lemon, Stack of Coins, Bell in any order.

K. GAMES 1-6: Winning Tickets will contain three (3) matching Play Symbols in a horizontal row or two (2) matching Play Symbols and a CHERRY (Tripler) Play Symbol.

L. GAMES 1-6: The CHERRY (Tripler) Play Symbol with two (2) matching Play Symbols will never appear on Non-Winning Tickets.

M. GAMES 1-6: The CHERRY (Tripler) Play Symbol with two (2) matching Play Symbols will win triple the prize amount shown as per the prize structure.

N. BONUS AREA: This play area consists of one (1) Play Symbol.

O. BONUS AREA: Tickets will display one Play Symbol. The Winning Play Symbols for this play area are: THREE DOLLARS, FIVE DOLLARS, TEN DOLLARS, FIFTN DOLLARS, TWENTY DOLLARS, THIRTY DOLLARS, FIFTY DOLLARS and ONE HUN DOLLARS.

2.3 Procedure for Claiming Prizes.

A. To claim a "BLACK CHERRY TRIPLER" Instant Game prize of \$3.00, \$5.00, \$9.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00 or \$100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00 or \$100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and 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 "BLACK CHERRY TRIPLER" Instant Game prize of \$1,000 or \$30,000, 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 "BLACK CHERRY TRIPLER" 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 Texas 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 "BLACK CHERRY TRIPLER" 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 "BLACK CHERRY TRIPLER" 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 7,200,000 Tickets in the Instant Game No. 1530. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1530 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	864,000	8.33
\$5	422,400	17.05
\$9	172,800	41.67
\$10	172,800	41.67
\$15	76,800	93.75
\$20	96,000	75.00
\$30	20,400	352.94
\$50	12,750	564.71
\$100	16,920	425.53
\$1,000	16	450,000.00
\$30,000	8	900,000.00

*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 3.88. 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. 1530 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. 1530, 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-201302600
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: June 21, 2013

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One-Call Board of Texas

Proposed Amendment - OCB Notification Center Technical Standards
 Technical Standard Proposals

All Technical Standards enacted by the One-Call Board of Texas (OCB) are acted on at its public meetings. The OCB follows the state rulemaking process, which entails two public actions with a proposal stage and an adoption stage. After the OCB authorizes the rule proposal, it is published in the *Texas Register* for comments specifically pertaining to the Technical Standard proposal.

You may submit comments by fax at (512) 467-6664 or they may be mailed to the following address. Comments must be postmarked not later than July 12, 2013 to be considered at the July 24, 2013 OCB Board meeting in Austin.

Submit comments to:
 One-Call Board of Texas
 P.O. Box 9764
 Austin, Texas 78766-9764

Proposed Amendment to OCB Notification Center Technical Standards
 The OCB proposes to amend OCB Notification Center Technical Standard #36 by adding §36e, Regarding the required information on Locate Request ticket transferred between NtCns. The purpose of the amendment is to enhance NtCn's and OCB's ability to determine when the Locate Ticket was initiated and transferred.

Statutory Authority
 The amendment is proposed under the statutory authority found in Utilities Code, Title 5, Chapter 251, §251.060(2).

OCB Notification Center Technical Standard

36. Create a format to transfer Locate Request information between NtCn's to include the following:

- a. Standardized data base fields to cover all possible aspects of locate requests.
- b. An agreed upon method to transfer locate ticket data between NtCn's. Method must be sufficient to handle projected call volumes and should include an alternate plan in case the primary system fails.
- c. A method to communicate to the excavator which Facility Operators will receive the notice to locate.
- d. Either a single ticket numbering system for each request or a cross-referencing method of NtCn specific ticket numbers to allow for proper tracking of each request for locate.
- e. Each locate ticket must contain the following:

- (1) Method of receipt
- (2) Date and time of receipt
- (3) Date and time of transfer to other NtCn's

TRD-201302699
Donald Ward
Executive Director
One-Call Board of Texas
Filed: June 26, 2013



Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on June 21, 2013, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc. d/b/a Suddenlink Communications to Amend Its State-Issued Certificate of Franchise Authority, Project Number 41605.

The requested amendment is to expand the service area footprint to include the city limits of Sanger, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41605.

TRD-201302682
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 24, 2013



Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on June 21, 2013, with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.402.

Docket Style and Number: Petition of DialToneServices, L.P. for a Good Cause Waiver from the Requirements of P.U.C. Substantive Rule §26.402. Docket Number 41604.

The Application: DialToneServices, L.P. is a satellite based provider of communications services in Texas and has been designated as an eligible telecommunications provider (ETP) and as an eligible telecommunications carrier (ETC) by the commission. Applicant seeks a good cause waiver of the requirements of P.U.C. Substantive Rule §26.402 to delay the filing deadline for the five-year plans to align with the filing deadline of identical information at the Federal Communications Commission.

Pursuant to the rule, the report shall be filed by July 1, 2013, a date that coincided with the deadline for the federal filing. However, on May 16, 2013, the FCC eliminated the requirement for the filing of a five-year plan by competitive ETCs and granted a limited waiver of the requirement that ETCs submit a five-year plan in 2013, instead requiring rate-of-return ETCs to file the five-year plans with their 2014 annual reports on July 1, 2014. DialToneServices, L.P. contends that good cause exists to waive the requirement of P.U.C. Substantive Rule §26.402(c)(1) for 2013.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 41604.

TRD-201302681
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 24, 2013



Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Cameron County Airport, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services for the current project as described below.

Current Project: Cameron County. TxDOT CSJ No.: 1321PSBEL. Scope: Provide engineering/design services to:

1. Joint seal, crack seal and slurry seal Runway 17-35
2. Seal PCC joints and mark terminal apron
3. Mark Runway 17-35
4. Install Obstruction lights on fence at Runway 17-35
5. Install new tie-downs on TB apron
6. Replace rotating beacon and tower
7. Install Emergency generators

The DBE goal for the current project is 12 percent. TxDOT Project Manager is Eusebio Torres, P.E.

The following is a listing of proposed projects at the Cameron County Airport during the course of the next five years through multiple grants.

Future scope work items for engineering/design services within the next five years may include the following: environmental assessment for entrance road relocation, relocate road, relocate fence for relocated entrance road, install new airport access gate, seal PCC joints Runway 17-35, taxiway and apron, slurry seal Runway 17-35, stripe and mark Runway 17-35, mark 13-31, construct T-hangar access taxiway, seal PCC joints and mark Taxiway B, mark Runway 8-26 as taxiway, demolish stub taxiway pavement to Runway 35 end and install remote communications outlet at the Cameron County Airport.

Cameron County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html> by selecting "Cameron County." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Seven completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than July 30, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection

committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Eusebio Torres, P.E., Project Manager.

TRD-201302692
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 25, 2013



Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and 43 Texas Administrative Code §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects. For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html. Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule. Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-201302693
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 25, 2013



Texas Water Development Board

Public Hearing Notice

The Texas Water Development Board (TWDB) will hold a public hearing on the draft State Fiscal Year (SFY) 2014 Clean Water State Revolving Fund (CWSRF) Intended Use Plan (IUP) and the Drinking Water State Revolving Fund (DWSRF) IUP. The hearing for the DWSRF and CWSRF IUPs will begin promptly at 2:00 p.m. on July 18, 2013, in Room 170 of the Stephen F. Austin Building at 1700 N. Congress Avenue, Austin, Texas 78701.

The CWSRF IUP contains a list of wastewater projects in prioritized order which will be considered for funding in 2014. The draft SFY 2014 CWSRF IUP has been prepared pursuant to rules adopted by the TWDB in 31 Texas Administrative Code Chapter 375.

The DWSRF IUP contains a list of water infrastructure projects in prioritized order which will be considered for funding in SFY 2014. The draft SFY 2014 DWSRF IUP has been prepared pursuant to the rules adopted by the TWDB in 31 Texas Administrative Code Chapter 371.

Interested persons are encouraged to attend the hearings and to present relevant and material comments concerning the draft IUPs. In addition, persons may submit written comments to Stacy Barna, Texas Water Development Board, P.O. Box, 13231, Austin, Texas 78711 or may email comments to iupcomments@twdb.texas.gov. Comments may also be received online utilizing an electronic form located at <http://www.twdb.texas.gov/apps/iup>. Comments and supplemental information will

only be accepted by electronic submission at the addresses stated, written comments to Stacy Barna, or at the public hearing on July 18, 2013. Any comments and supplemental information must be received by 5:00 p.m. central standard time, July 22, 2013, to be considered. Interested persons also may review the draft DWSRF and CWSRF IUPs at the Board's website at http://www.twdb.texas.gov/financial/programs/DWSRF/doc/SFY14_DWSRF_IUP.pdf and http://www.twdb.texas.gov/financial/programs/CWSRF/doc/SFY14_CWSRF_IUP.pdf respectively.

Please note that time limits on public comments may be imposed to allow all members of the public to be heard. Additionally, the TWDB discourages comments requesting a revised rating based on project information not previously submitted.

Persons with disabilities who plan to attend this meeting 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 Merry Klonower at (512) 463-8165 two (2) working days prior to the hearing so that appropriate arrangements can be made.

TRD-201302603

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Filed: June 21, 2013



Request for Statements of Qualifications Water Research Study Priority Topics

The Texas Water Development Board (TWDB) requests the submission of Statements of Qualifications from interested applicants leading to the possible award of a contract for state fiscal year 2013 to conduct water research on a priority topic. The total amount of the grant awarded by the board shall not exceed \$300,000 from the Research and Planning Fund. Rules governing the Research and Planning Fund (31 Texas Administrative Code Chapter 355) are available upon request from the TWDB, or may be found at the Secretary of State's Internet address: <http://www.sos.state.tx.us/tac/>; then sequentially select, "View the current *Texas Administrative Code*," "Title 31," "Part 10," "Chapter 355," and "Subchapter A." Guidelines for responding to this request for Statements of Qualifications, which include an application form and detailed information on the research topic, will be available at the board's website at: http://www.twdb.texas.gov/about/contract_admin/RFQ/, or will be provided upon request.

Description of the Research Objectives and Purpose

Statements of Qualifications are requested for the following priority research topic.

Testing Water Quality in a Municipal Wastewater Effluent Treated to Drinking Water Standards (not to exceed \$300,000)

Drought and long-term water supply needs have led several entities in Texas to consider treated wastewater effluent as a potential domestic water supply. The Colorado River Municipal Water District has recently started operating a treatment facility in Big Spring, Texas, to provide water to its customers.

The Raw Water Production Facility in Big Spring is the first facility in Texas to directly blend a water source produced from municipal wastewater effluent into a raw water supply without an environmental buffer. Although pilot testing of the membrane processes was conducted prior to the final design of the facility, it did not include the advanced oxidation process that typically follows membrane treatment. Additional testing at full scale, and with a broader list of parameters, will bet-

ter characterize the quality and consistency achievable with advanced treatment.

Pharmaceuticals, personal care products, and a variety of manufactured chemicals have been detected in numerous water sources, raising fears of contamination and unintentional medication of the general public. Research across the country is greatly increasing the knowledge about these chemicals, identifying levels of public health significance, treatability, and typical occurrence ranges.

As required by the Texas Commission on Environmental Quality, the Big Spring facility is subject to continuous testing of specific indicator parameters to verify that the processes are functioning as intended. However, more extensive testing for pathogenic organisms and selected chemicals which have potential significance for public health in this unique water source will provide valuable data for comparison with other sources of water. Additional monitoring will take advantage of this developing body of knowledge and contribute new data on the occurrence and treatability of key parameters in an operating potable reuse facility. The results will be placed in this developing context of public health significance, allowing better understanding of the risks associated with potable reuse.

Because water suppliers are increasingly being forced to consider compromised or non-traditional water sources including domestic wastewater effluent, we expect the research to not only benefit the water community in Texas and the state's regulatory agency but also others, nationally and internationally.

The goals of the study will be to determine the:

1. effectiveness and consistency of membrane filtration, reverse osmosis, and advanced oxidation in removing or inactivating pathogens such as *Giardia*, protozoa, *Cryptosporidium*, *E. coli*, and other organisms from treated municipal wastewater in a full-scale facility under changing seasonal conditions and from various locations in the treatment process;
2. accuracy, repeatability of results, evaluation of applicable primers, and economic feasibility of using real-time, on-site analytical methods to test for *Cryptosporidium* and *Giardia*;
3. accuracy and economic feasibility of using a surrogate (for example, conductivity) to conduct continuous integrity testing of reverse osmosis membranes to remove *Cryptosporidium* and viruses;
4. quality of "raw water" reclaimed from municipal wastewater effluent as compared to other regional water supplies in terms of representative chemical compounds such as pharmaceuticals, personal care products, disinfection by-products, industrial chemicals, and other key chemicals of interest;
5. changes in the quality of treated surface water when effluent-derived raw water is blended with other raw water sources; and
6. water quality parameters that may require closer examination in the process of planning, designing, and monitoring similar projects in the future.

Deliverables should include a report that can be reproduced by printing and also be available via the web in a format that meets accessibility requirements. In addition, all spreadsheets and worksheets contained in the report shall be unlocked to allow the user the capability of making modifications to suit specific local conditions.

Deadline for Submittal, Review Criteria and Contact Person for Additional Information

Historically Underutilized Businesses (HUBs) are encouraged to submit Statements of Qualifications and/or participate as subcontractors in the water research program. As instructed at Texas Government

Code, §2161.252 and 34 Texas Administrative Code §20.14, if the anticipated cost of the study is to exceed \$100,000, the applicant must complete a HUB Subcontracting Plan according to: <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>.

All applicants must obtain the board's guidelines for responding to the Statements of Qualifications. The guidelines are available at http://www.twdb.texas.gov/about/contract_admin/RFQ/.

Six double-sided, double-spaced copies and one CD with a copy of the application as a PDF of a completed Statement of Qualifications must be filed with the board prior to 12:00 p.m. on Friday, July 19, 2013.

Statements of Qualifications can be directed either in person to David Carter, Texas Water Development Board, Stephen F. Austin Building, Room 610D, 1700 North Congress Avenue, Austin, Texas; or by mail to David Carter, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711-3231.

TRD-201302602
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: June 21, 2013



Workforce Solutions North Texas

Request for Proposals

The North Texas Workforce Development Board, D/B/A Workforce Solutions North Texas, a 501(c)(3) not-for-profit, tax exempt organiza-

tion, in compliance with Texas laws Senate Bill 642 (73rd Legislature, Regular Session) and House Bill 1863 (74th Legislature, Regular Session), is seeking proposals for a Paperless Document Management System and Technical Assistance in Planning and Execution. The Workforce Development Area includes the following eleven (11) counties in North Texas: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger and Young.

To obtain Request for Proposal packets (available July 5, 2013) or to obtain more information, contact Ken Tritton, Quality Assurance Manager at (940) 767-1432; fax: (940) 322-2683 or via email: ken.tritton@ntxworksolutions.org. Deadline to submit a proposal is no later than 5:00 p.m. (CDT) on July 26, 2013. The contracting period will be determined based on funding.

Workforce Solutions is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Program operation is dependent upon availability of funds from Texas Workforce Commission.

TRD-201302601
Mona Williams Statser
Executive Director
Workforce Solutions North Texas
Filed: June 21, 2013



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)