TEXAS REGISTER

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

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

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Public Utility Commission of Texas

Texas Department of Transportation

Workforce Solutions Upper Rio Grande

Open Meetings

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

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

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

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

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

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

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

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

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

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-1148-GA

Requestor:

The Honorable Harold V. Dutton

Chair, Committee on Urban Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether justice courts may charge a fee for the filing of an application for an occupational driver's license (RQ-1148-GA)

Briefs requested by September 19, 2013

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

TRD-201303714
Katherine Cary
General Counsel
Office of the Attorney General
Filed: September 4, 2013

♦ ♦ ♦

Requests for Opinions

RQ-1143-GA

Requestor:

The Honorable Ryan Guillen

Chair, Committee on Culture, Recreation & Tourism

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

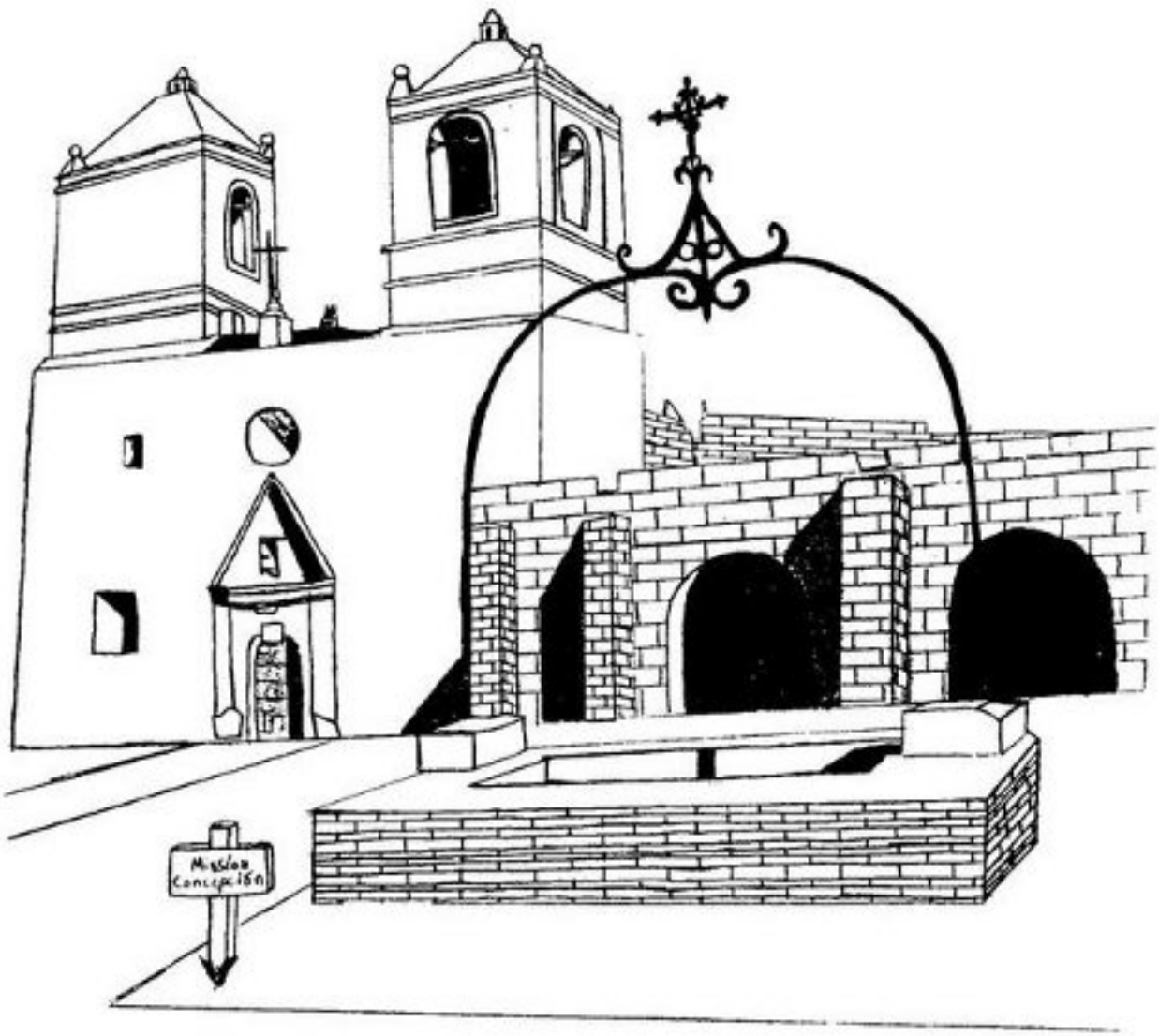
Re: The authority of a county appraisal district to place excess funds in a capital improvement fund or to spend excess funds on a one-time, lump-sum payment to its employees (RQ-1143-GA)

Briefs requested by August 28, 2013

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

TRD-201303721
Katherine Cary
General Counsel
Office of the Attorney General
Filed: September 4, 2013

♦ ♦ ♦


Mission
Concepción

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

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.335

The Comptroller of Public Accounts adopts on an emergency basis new §3.335, concerning Property Used in a Qualifying Data Center; Temporary State Sales Tax Exemption. This new rule is being adopted to implement House Bill 1223, 83rd Legislature, 2013, which enacted Tax Code, §151.359 and amended Tax Code, §151.317. The comptroller is filing an emergency rule because the bill was signed by the governor on June 14, 2013, and specifies that the effective date of the new law is September 1, 2013. Because of this very short time frame, adoption of a rule on an emergency basis is necessary.

The rule is adopted on an emergency basis under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new rule implements Tax Code, §151.359 and §151.317.

§3.335. Property Used in a Qualifying Data Center; Temporary State Sales Tax Exemption.

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

(1) Capital investment--The amount paid to acquire capital or fixed assets that are purchased for use in the operation of a qualifying data center, and that, for U.S. federal income tax purposes, qualify as Section 179, Section 1245, or Section 1250 property, as those terms are defined in Internal Revenue Code, §§179(d)(1), 1245(a)(3), and 1250(c), respectively. Examples include, but are not limited to, land; buildings; furniture; machinery and equipment used for the processing, storage, and distribution of data; and labor used specifically to construct or refurbish property actually used in a qualifying data center to house servers and related equipment. The term does not include:

(A) property purchased before September 1, 2013;

(B) property purchased by a qualifying owner, qualifying operator, or qualifying occupant from persons or legal entities related by ownership or common control;

(C) property that is leased under an operating lease; or

(D) expenditures for routine and planned maintenance required to maintain regular business operations.

(2) County average weekly wage--The average weekly wage in a county for all jobs during the most recent four quarterly periods for which data is available, as computed by the Texas Workforce Commission, at the time a data center creates a job used to qualify under this section.

(3) Data center--At least 100,000 square feet of space in a single building, or portion of a single building, that:

(A) is or will be located in this state;

(B) is or will be specifically constructed or refurbished for use primarily to house servers, related equipment, and support staff for the processing, storage, and distribution of data;

(C) will be used by a single qualifying occupant for the processing, storage, and distribution of data;

(D) will not be used primarily by a telecommunications provider to place tangible personal property that is used to deliver telecommunications services; and

(E) has or will have an uninterruptible power source, generator backup power, a sophisticated fire suppression and prevention system, and enhanced physical security that includes restricted access, video surveillance, and electronic systems.

(4) Permanent job--An employment position that will exist for at least five years after the date the job is created.

(5) Qualifying data center--A facility that the comptroller certifies as meeting each of the requirements in subsection (d) of this section.

(6) Qualifying job--

(A) A new, full-time job created by a qualifying owner, qualifying operator, or qualifying occupant of a qualifying data center that:

(i) is a permanent job;

(ii) is located in the same county in Texas in which the associated qualifying data center is located;

(iii) will provide at least 1,820 hours of employment a year to a single employee;

(iv) pays at least 120% of the county average weekly wage, as defined by paragraph (2) of this subsection, for the county where the job is located;

(v) is not transferred from one county in Texas to another county in Texas; and

(vi) is not created to replace a qualifying job that was previously held by another employee.

(B) The term includes a new employment position staffed by a third-party employee or contractor if the employment position meets the requirements of subparagraph (A) of this paragraph and if there is a written contract between the contractor or third-party

employer and a qualifying owner, qualifying operator, or qualifying occupant of the associated qualifying data center which:

(i) provides for shared employment responsibilities between the contractor or third-party employer and the qualifying owner, qualifying operator, or qualifying occupant; and

(ii) provides that the third-party employee is permanently assigned to the associated qualifying data center or another location operated by the qualifying owner, qualifying operator, or qualifying occupant within the county where the data center is located for the term of the written contract.

(7) Qualifying operator--A person who controls access to a qualifying data center, regardless of whether that person owns each item of tangible personal property located at the qualifying data center. A qualifying operator may also be the qualifying owner.

(8) Qualifying owner--A person who owns the building in which a qualifying data center is located. A qualifying owner may also be the qualifying operator.

(9) Qualifying occupant--A person who:

(A) contracts with either a qualifying owner or qualifying operator to place, or cause to be placed, tangible personal property at the qualifying data center for use by the occupant. The qualifying occupant may also be the qualifying owner and the qualifying operator of the qualifying data center; and

(B) is the sole occupant of the qualifying data center. A qualified occupant may provide data storage and processing services but may not sublease any real or tangible personal property located within the qualifying data center to a third party. For example, if a single occupant leases a qualifying data center with 150,000 square feet of useable space, the qualifying occupant may not use 100,000 square feet for its qualifying use and sublease the remaining 50,000 square feet to a third party. Similarly, a qualifying occupant may not sell or lease excess servers or server space, including the provision of managed or dedicated servers, at the qualifying data center to third parties.

(b) Exemption. Tangible personal property purchased by a qualifying owner, qualifying operator, or qualifying occupant for installation at, incorporation into, or use in a qualifying data center is exempted from the state sales and use tax imposed by this chapter if the tangible personal property is necessary and essential to the operation of the qualifying data center and is:

(1) electricity. A predominant use study will be required to differentiate between taxable and nontaxable use of electricity from a single meter unless the qualifying data center is a stand-alone facility of which the qualifying occupant is the sole inhabitant. For more information regarding predominant use studies, refer to §3.295 of this title (concerning Natural Gas and Electricity). The qualifying owner, qualifying operator, or qualifying occupant of a stand-alone qualifying data center is not required to perform a study and may, in lieu of tax, supply its utility provider with a properly completed Qualifying Data Center Exemption Certificate, Form 01-929. Refer to subsection (g) of this section regarding exemption certificates;

(2) an electrical system;

(3) a cooling system;

(4) an emergency generator;

(5) hardware or a distributed mainframe computer or server;

(6) a data storage device;

(7) network connectivity equipment;

(8) a rack, cabinet, and raised floor system;

(9) a peripheral component or system;

(10) software;

(11) a mechanical, electrical, or plumbing system that is necessary to operate any tangible personal property;

(12) any other item of equipment or system necessary to operate any tangible personal property, including a fixture; or

(13) a component part of any tangible personal property described in this subsection.

(c) Exclusion from exemption. The exemption in subsection (b) of this section does not apply to:

(1) office equipment or supplies;

(2) maintenance or janitorial supplies or equipment;

(3) equipment or supplies used primarily in sales activities or transportation activities;

(4) tangible personal property on which the purchaser has received or has a pending application for a refund under Tax Code, §151.429 (concerning Tax Refunds for Enterprise Projects);

(5) tangible personal property not otherwise exempted under subsection (b) of this section that is incorporated into real estate or into an improvement of real estate;

(6) tangible personal property that is rented or leased for a term of one year or less; or

(7) notwithstanding Tax Code, §151.3111 (concerning Services on Certain Exempted Personal Property), a taxable service that is performed on tangible personal property exempted under this section.

(d) Eligibility for certification of a data center. The comptroller may certify an applicant facility as a qualifying data center if:

(1) the applicants declare on the application for certification that the facility does or will meet all of the requirements for the definition of the term "data center" set out in subsection (a)(3) of this section;

(2) the qualifying owner, qualifying operator, or qualifying occupant, jointly or independently, have agreed to, on or after Sept. 1, 2013:

(A) create at least 20 qualifying jobs on or before the fifth anniversary of the date that the data center is certified by the comptroller as a qualifying data center; and

(B) make a capital investment of at least $200 million in the applicant data center over a five-year period. The five-year period will begin on the date the data center is certified by the comptroller as a qualifying data center; and

(3) the applicant facility does not have an agreement under which it receives a limitation on appraised value of property for ad valorem tax purposes under Tax Code, Chapter 313 (concerning the Texas Economic Development Act).

(e) Application process.

(1) A facility that is eligible to be certified under subsection (d) of this section as a qualifying data center by the comptroller shall apply for a registration number on the Texas Application for Certification as a Qualifying Data Center, Form AP-223. The application must include:

(A) the name, contact information, and authorized signature for the qualifying occupant and, if applicable, the name, contact information, and authorized signature for the qualifying owner and the qualifying operator who will claim the exemption authorized under this section. After certification of the qualifying data center, the comptroller will issue a separate registration number to the qualifying owner, the qualifying operator, and the qualifying occupant based on the registration number of the qualifying data center;

(B) a business proposal summarizing the plan of the qualifying owner, qualifying operator, or qualifying occupant, independently or jointly, to meet the capital investment and jobs creation agreement required for certification of a qualifying data center in subsection (d)(2) of this section; and

(C) a statement confirming that the qualifying owner, qualifying operator, and qualifying occupant, as applicable, agree that the statute of limitations provided in Tax Code, §111.201 on the assessment of tax, penalty, and interest on purchases made tax-free under this section is tolled from the date of certification until the fifth anniversary of that date, or until such time as the comptroller is able to verify that the job creation and capital investment requirements in subsection (d)(2) of this section have been met, whichever is later.

(2) Information provided on and with the application is confidential under Tax Code, §151.027 (concerning the Confidentiality of Tax Information).

(f) Temporary state sales and use tax exemption dates. The state sales and use tax exemption is temporary. The exemption applies to qualified purchases made during the exemption period.

(1) A qualifying data center's exemption period begins on the date the data center is certified by the comptroller.

(2) A qualifying data center's exemption period ends 10 or 15 years from the certification date, depending on the amount of capital investment made.

(A) A qualifying data center's sales tax exemption expires 10 years from the date of certification by the comptroller if the qualifying owner, qualifying operator, or qualifying occupant, independently or jointly, makes a capital investment of at least $200 million, but less than $250 million, within the first 5 years after certification.

(B) A qualifying data center's sales tax exemption expires 15 years from the date of certification by the comptroller if the qualifying owner, qualifying operator, or qualifying occupant, independently or jointly, makes a capital investment of at least $250 million within the first 5 years after certification.

(3) The comptroller will audit each certified data center at its five year anniversary to verify the jobs created and the amount of capital investment made in the qualifying data center.

(4) Once all jobs are created as provided under subsection (d)(2)(A) of this section, the qualifying owner, qualifying operator, or qualifying occupant, either singly or jointly, must timely notify the comptroller by providing a properly completed Qualifying Data Center Job Creation Report, Form 01-930.

(g) Exemption certificate. Each person who is eligible to claim an exemption authorized by this section must hold a registration number issued by the comptroller.

(1) To claim a state sales tax exemption under this section for the purchase of tangible personal property identified in subsection (b) of this section, a qualifying owner, qualifying operator, or qualifying occupant must provide to the seller of a taxable item a Qualifying Data Center Exemption Certificate, Form 01-929. The exemption certificate does not apply to local sales and use tax. Refer to subsection (j) of this section for more information regarding local sales and use tax.

(2) To claim the exemption, a qualifying owner, qualifying operator, or qualifying occupant must properly complete all required information on the exemption certificate, including:

(A) the data center registration number;

(B) the qualifying owner, qualifying operator, or qualifying occupant registration number;

(C) the qualifying owner, qualifying operator, or qualifying occupant address;

(D) a description of the tangible personal property to be purchased; and

(E) the signature of the purchaser and the date.

(3) The properly completed qualifying data center exemption certificate containing the certified data center and purchaser's registration number to purchase items of the type listed in subsection (b) of this section is the retailer's documentation that a tax exempt purchase was made in good faith. The retailer is required to keep the exemption certificate and all other financial records relating to the exempt sale, including records to document the retailer's collection of the local sales and use tax. The retailer must be able to match invoices of tax-exempt sales to the purchaser's exemption certificate. This may be accomplished by the retailer entering the purchaser's registration number on each invoice.

(4) A retailer is not required to accept a qualifying data center exemption certificate. If a retailer chooses not to accept an exemption certificate issued by a purchaser, the purchaser may instead request a refund of the tax paid from the comptroller. A retailer shall provide an Assignment of Right to Refund, Form 00-985, if that retailer does not accept the qualifying data center exemption certificate given by a qualifying owner, qualifying operator, or qualifying occupant when qualifying purchases of tangible personal property are made.

(h) Revocation. By filing an application for certification of a qualifying data center, the qualifying owner, qualifying operator, and qualifying occupant, as applicable, commit to making a capital investment of at least $200 million in the data center during its first five years, creating at least 20 permanent, full-time, qualifying jobs, and maintaining those jobs for at least five years. In addition, these entities commit to ensuring that the facility meets the definition of a "data center" in subsection (a)(3) of this section and will be occupied by a single qualifying occupant over the life of the qualified data center's sales tax exemption. For more information, refer to subsection (d) of the section.

(1) Failure to meet one or more of the certification requirements described in subsection (d) of this section will result in termination of the data center's certification and the revocation of all related qualifying owner, qualifying operator, and qualifying occupant exemption registration numbers.

(2) Each entity that has a registration number revoked will be liable for state sales or use taxes, including penalty and interest from the date of purchase, on all items purchased tax-free under this section, back to the original date of certification of the data center as a qualifying data center.

(3) If a formal waiver of the statute of limitations under Tax Code, §111.203 is deemed necessary to ensure against a loss of revenue to the state by allowing the comptroller to verify, prior to the expiration of the statute of limitations on assessment, that each of the certification requirements in subsection (d) of this section has been met, the failure to execute a timely statutory waiver will result in the termination of the

data center's certification and the revocation of all related registration numbers.

(i) Documentation and record retention. In accordance with Tax Code, §111.0041, all qualifying occupants, qualifying owners, and qualifying operators of a qualifying data center must keep complete records to document any and all tax-exempt purchases made under the qualifying data center exemption, and to confirm payment of the local sales and use tax on such purchases. In addition, each qualifying owner, qualifying operator, and qualifying occupant of a qualifying data center must keep complete records to document the capital investment made in the qualifying data center, the creation of 20 qualifying jobs, and the retention of those jobs for a period of at least five years. These records must be retained until the data center's certification expires. For example, a qualifying owner, qualifying operator, and qualifying occupant should keep comprehensive records of capital investment expenditures, such as contracts, invoices, and sales receipts, and employment records regarding job creation, including contractor or third-party employer. In the event of revocation of a qualifying data center is certification, the records of all qualifying owners, qualifying operators, and qualifying occupants must be retained until all assessments have been resolved.

(j) Local tax. The state sales and use tax exemption for qualifying owners, qualifying operators, and qualifying occupant of a qualifying data center does not apply to local sales and use tax. Local sales and use tax must be paid on the purchase of any tangible personal property that qualifies for exemption from state sales and use tax under this section.

(k) An entity that qualifies for state sales and use tax exemption under this section is not eligible to receive a limitation on appraised value of property for ad valorem tax purposes under Tax Code, Chapter 313 (concerning the Texas Economic Development Act).

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

Filed with the Office of the Secretary of State on August 28, 2013.

TRD-201303635
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: September 1, 2013
Expiration date: December 29, 2013
For further information, please call: (512) 475-0387

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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER C. VOTING SYSTEMS

1 TAC §81.58

The Office of the Secretary of State, Elections Division, proposes new §81.58, concerning the use of an electronic device to capture a voter's signature for the signature roster, as authorized by the Act of May 24, 2013, 83rd Leg., R.S., H.B. 2373, Chapter 1000 ("Act").

The Act amends §63.002, Election Code to authorize the use of electronic devices to capture a voter's signature. The Act provides that the signature roster may be in the form of an electronic device that is capable of capturing a voter's signature nest to the voter's name on the device.

The proposed rule is consistent with the legislative intent of the Act, namely, by allowing counties currently employing electronic pollbooks a method of reducing the paperwork and streamlining the voting process during an election.

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

Mr. Ingram also has determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of enforcing the new rule will be to speed the processing of voters, especially in political territories that experience large volumes of in-person voting. There will be no direct adverse economic impact for small businesses or micro businesses. There will be no effect to individuals required to comply with the rule as proposed.

Request for Comments

Interested persons may submit written comments on the proposed rule to the Elections Division, Office of the Texas Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060. Comments may also be sent via e-mail to: elections@sos.state.tx.us. For comments submitted electronically, please include "Proposed Adoption of Rule §81.58" in the subject line. Comments must be received no later than October 14, 2013. Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed rule may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650.

The new rule is proposed pursuant to the rulemaking authority explicitly provided in the Act and by §31.003, Election Code, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

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

§§81.58. Use of Electronic Signature Capture Device for Signature Roster.

(a) Pursuant to §63.002(d), Texas Election Code, a voter's signature may be captured by an electronic device for the signature roster.

(b) An "Electronic Signature" is defined as a digitized image of a handwritten signature. An "Electronic Signature Device" is defined as a device that permits a voter to make an electronic signature.

(c) To be used in an election in the State of Texas, electronic signature devices must be approved by the Secretary of State.

(1) A vendor who wishes to seek approval of an electronic signature capture device used in conjunction with a particular software must submit the request in writing to the Secretary of State.

(2) The request must include information regarding:

(A) type of device;

(B) name of device;

(C) any associated model numbers;

(D) the software it will be used with; and

(E) the information the device can display with respect to subsection (d)(3) and (4) of this section.

(3) Upon reviewing the request, the Secretary of State may request a demonstration of the electronic signature capture device.

(4) After completing the review, the Secretary of State will issue either an approval or a rejection in writing within 30 days of receiving initial request.

(5) The Secretary of State will maintain a list of approved electronic signature capture devices on their website.

(d) To be used in an election in the State of Texas, electronic signature capture devices must meet the following standards.

(1) The name of the voter must appear on the electronic signature device at the same time in which the voter is marking a signature, pursuant to §63.002(d), Texas Election Code.

(2) After marking signature, voter must be able to:

(A) indicate they are accepting the digitized image; or

(B) reject the digitized image, and be given another opportunity to mark their signature.

(3) If the electronic signature device only displays the voter's name and a place for the voter's signature, then the entity using the device must print out a copy of the signature and affix the printed signature to a hard copy of the signature roster.

(4) If the electronic signature device displays the voter's name, a place for the voter's signature, and a way for a voter to accept and initial any required affidavits on the device screen, the entity using the device may maintain their signature roster electronically. If an entity maintains their signature roster electronically, the entity must be able to produce a hard copy of the signature roster that contains the electronic signature of the voters on that list.

(e) Entities using electronic signatures must retain the electronic signature file in accordance with the preservation period for the election records of that election.

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 August 29, 2013.

TRD-201303662
Keith Ingram
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 463-5650

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 28. TEXAS AGRICULTURAL FINANCE AUTHORITY

The Board of Directors (Board) of the Texas Agricultural Finance Authority (TAFA) of the Texas Department of Agriculture (TDA) proposes amendments to Chapter 28, §§28.2, 28.3, 28.13, and 28.29, concerning TAFA programs. The amendments clarify applicant eligibility criteria and TAFA program administration. The amendments to §28.2 add a reference to the TAFA definitions within the Texas Agriculture Code, and also add the definition of "rural," as defined by the Board. The amendments to §28.3 clarify the process to submit a public information request to the Board. The amendments to §28.13 are proposed to add the state's goal of development and expansion of business in rural areas within the Interest Rate Reduction Program definitions, to make the section consistent with amendments made to Texas Agriculture Code, Chapter 44, §44.007, relating to the Interest Rate Reduction Program. The amendments to §28.29 of the Agricultural Loan Guarantee Program clarify the program limit and revise the annual date for calculating program balances.

Bryan Daniel, chief administrator for trade and business development, has determined that for the first five years 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 sections.

Mr. Daniel 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 or administering the amended sections will be clarification regarding eligibility and funding levels under the program. There will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the proposed amendments.

Written comments on the proposal may be submitted to Bryan Daniel, Chief Administrator, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER A. FINANCIAL ASSISTANCE RULES

4 TAC §28.2, §28.3

The amendments to §28.2 and §28.3 are proposed under Texas Agriculture Code, §58.022, which provides that the Board may adopt and enforce bylaws, rules, and procedures and perform all functions necessary for the Board to carry out its duties to administer its programs.

Texas Agriculture Code, Chapter 58, is affected by this proposal.

§28.2. Definitions.

In addition to the definitions set forth in Texas Agriculture Code, §58.002, the [~~The~~] following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Definitions applicable to specific programs may be included within the applicable subchapter.

(1) - (22) (No change.)

(23) Rural--A municipality with a population of less than 50,000.

(24) [~~(23)~~] Staff--The staff of the Authority or staff of the department performing work for the Authority.

(25) [~~(24)~~] State--The State of Texas.

§28.3. Examination of Records.

Any party requesting [~~the examination of~~] records of the Authority must submit a written request to the department, pursuant to the Texas Public Information [~~Open Records~~] Act, Texas Government Code, Chapter 552[~~, shall indicate in writing the specific nature of the document to be viewed, and if copies are desired~~].

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 August 28, 2013.

TRD-201303629
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 463-4075

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SUBCHAPTER B. INTEREST RATE REDUCTION PROGRAM

4 TAC §28.13

The amendments to §28.13 are proposed under Texas Agriculture Code, §58.022, which provides that the Board may adopt and enforce bylaws, rules, and procedures and perform all functions necessary for the Board to carry out its duties to administer its programs.

Texas Agriculture Code, Chapter 58, is affected by this proposal.

§28.13. Definitions.

In addition to the definitions set out in the Texas Agriculture Code, Chapter 58, as amended, and in Subchapter A of this chapter (relating to Financial Assistance Rules), the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) (No change.)

(2) Eligible borrower--A person who proposes to use the proceeds of a loan under the interest rate reduction program in a manner that will help accomplish the state's goal of fostering the:

(A) creation and expansion of enterprises based on agriculture in this state; or[.]

(B) development or expansion of businesses in rural areas of the state.

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

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

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Dolores Alvarado Hibbs
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For further information, please call: (512) 463-4075

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SUBCHAPTER C. AGRICULTURAL LOAN GUARANTEE PROGRAM

4 TAC §28.29

The amendments to §28.29 are proposed under Texas Agriculture Code, §58.022, which provides that the Board may adopt and enforce bylaws, rules, and procedures and perform all functions necessary for the Board to carry out its duties to administer its programs.

Texas Agriculture Code, Chapter 58, is affected by this proposal.

§28.29. General Terms and Conditions of the Authority's Financial Commitment.

(a) (No change.)

(b) Program limit. The amount that may be used to guarantee loans under this subchapter may not exceed three-fourths of the amount contained in the Texas agricultural fund [~~The Program has a limit of three times the balance of the Texas Agricultural Fund less any portion used in the Young Farmer Interest Rate Reduction Program and the Young Farmer Grant Program~~], calculated on an annual basis as of September 30 [~~August 31~~] each year.

(c) - (h) (No change.)

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

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Dolores Alvarado Hibbs
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Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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PART 13. PRESCRIBED BURNING BOARD

CHAPTER 225. GENERAL PROVISIONS

The Board of Directors (Board) of the Prescribed Burning Board (PBB) of the Texas Department of Agriculture (TDA) proposes to repeal §225.1 and §225.2 and simultaneously proposes new §§225.1 - 225.6, concerning general provisions. The repeals and new sections are proposed to consolidate and reorganize existing rules and present them to the public and the regulated industry in a more easily understandable format and to make changes based on Board and legislative action. The proposed new sections provide applicant certification categories, eligibility criteria, continuing fire training requirements, and PBB program administration.

Nonsubstantive revisions have been made to the rules, including replacing references to "continuing education units" with "continuing fire training," the standardized term for the industry, and correcting previous references to "certified prescribed burn manager" to "certified and insured prescribed burn manager", to make the rules consistent with current law and amendments made to current law by the passage of Senate Bill 702, 83rd Legislature, Regular Session, 2013. In addition, the following, more substantive, changes have been made. Definitions for the terms "Code", "Governmental Unit", "Local Government", "Prescribed Burning Organization", and "Sponsor" are added to new §225.1. Additionally, the acronyms for the various public and governmental institutions in §225.1 were corrected to reflect the proper names. New §225.2, relating to Categories of Certification, includes a new category of certification for certified and insured prescribed burn managers which is the Governmental Certified and Insured Prescribed Burn Manager. Section 225.5, relating to Public Information Act, is added to provide applicants and the general public with information about the availability of information submitted relating to certification by the Board.

David Kostroun, chief administrator for agriculture and consumer protection, has determined that for the first five years the proposed repeal and new sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal.

Mr. Kostroun has also determined that for each year of the first five years the proposed repeal and new sections are in effect, the public benefit anticipated as a result of enforcing or administering the proposed repeal and new sections will be clarification regarding eligibility, training requirements, and certification criteria. There will be no economic cost for micro-businesses, small

businesses or individuals who are required to comply with the proposed repeal and new sections.

Written comments on the proposal may be submitted to David Kostroun, Agriculture and Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

4 TAC §225.1, §225.2

(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 Prescribed Burning Board, Texas Department of Agriculture, or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 225 is proposed under Natural Resources Code, §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by the proposal.

§225.1. Definitions.
§225.2. Information Requested by the Board.

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

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Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
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For further information, please call: (512) 463-4075

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4 TAC §§225.1 - 225.5

New Chapter 225 is proposed under Natural Resources Code, §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by the proposal.

§225.1. Definitions.

The following words and terms, when used in Title 4, Part 13 of the Texas Administrative Code, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Prescribed Burning, Chapter 153, Texas Natural Resources Code.

(2) Board--Prescribed Burning Board.

(3) Burn Boss--Individual responsible for the direct application of prescribed fire to a burn unit as detailed in a written prescribed burn plan.

(4) Commissioner--The Commissioner of Agriculture of the state of Texas, or the Commissioner's designee.

(5) Certified and Insured Prescribed Burn Manager--A person with ultimate authority, and responsibility for a prescribed burn, and liability insurance coverage as required by §227.1 of this title (relating to Minimum Insurance Requirements), who has been certified by the Board.

(6) CFT--Continuing Fire Training.

(7) Code--Texas Administrative Code.

(8) Department--The Texas Department of Agriculture.

(9) Governmental Unit--A state agency, local government, or an entity acting on behalf of a state agency or institution or local government, as defined by §2259.01 of the Texas Government Code.

(10) Lead Instructor--An individual who provides leadership and coordination in the conduct of a board-approved certified and insured prescribed burn manager course and has authority to select all instructors.

(11) Local Government--A municipality or other political subdivision of this state or a combination of political subdivisions, including a combination created under Chapter 791 of the Texas Government Code.

(12) NRCS--Natural Resources Conservation Service of the United States Department of Agriculture.

(13) NWCG--National Wildfire Coordinating Group.

(14) Prescribed Burning--The controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental conditions in accordance with a written prescribed burn plan.

(15) Prescribed Burning Organization--An entity established for the purpose of promoting the use of prescribed burning as a tool for land management, including an entity established to represent interests of persons involved in land conservation and/or land management.

(16) Sponsor--An approved university, governmental agency, an association, a private independent business, or other qualified entity approved by the Board to conduct fire training for credit toward prescribed burn manager certification.

(17) Structures containing sensitive receptors--A man-made structure utilized for human residence or business, the containment of livestock, or the housing of sensitive live vegetation. The term "man-made structure" does not include such things as range fences, roads, bridges, hunting blinds or facilities used solely for the storage of hay or other livestock feeds. The term "sensitive live vegetation" is defined as vegetation which has potential to be damaged by smoke and heat, examples of which include, but are not limited to: nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants.

(18) TAES--Texas A&M AgriLife Extension Service.

(19) TAR--Texas A&M AgriLife Research.

(20) TAMU--Texas A&M University, or a branch of the Texas A&M University system.

(21) TFS--Texas A&M Forest Service.

(22) TCEQ--Texas Commission on Environmental Quality.

(23) TPWD--Texas Parks and Wildlife Department.

(24) TSSWCB--Texas State Soil and Water Conservation Board.

(25) TTU--Texas Tech University.

(26) USDA--United States Department of Agriculture.

§225.2. Categories of Prescribed Burn Manager Certification.

(a) Prescribed burn managers may be certified in one of the following categories.

(1) Commercial Certified and Insured Prescribed Burn Manager. A commercial certified and insured prescribed burn manager may conduct prescribed burns for hire on any property allowed by his or her certification, including that of his or her employer.

(2) Private Certified and Insured Prescribed Burn Manager. A private certified and insured prescribed burn manager conducts prescribed burns on property owned by, leased by, or occupied by the private certified and insured prescribed burn manager or that person's employer. An employee qualifies as a private certified and insured prescribed burn manager if he or she is employed to perform duties related to the operation and conducts prescribed burning activities, but does not provide the necessary equipment.

(3) Not-for-Profit Certified and Insured Prescribed Burn Manager. A not-for-profit certified and insured prescribed burn manager conducts prescribed burns on property owned or leased by a prescribed burning organization or on property owned or leased by a person who is a member of a prescribed burning organization. For purposes of this section, a prescribed burning organization must be an association, cooperative, or organization legally formed and authorized under Texas law, or a domestic entity legally formed under the Texas Business Organizations Code, and must:

(A) hold a certificate of account status from the Texas Comptroller of Public Accounts reflecting that the association, cooperative, organization, or domestic entity is current in paying all franchise taxes due under Texas law, or provide appropriate documentation, issued by the Texas Comptroller of Public Accounts, or in a form approved by the Board, that the association, cooperative, organization, or domestic entity is exempt from the payment of franchise taxes under Texas law;

(B) have its registered office and principal place of business in the State of Texas; and

(C) provide, as one of the primary purposes of the organization, education and training to its members or shareholders regarding the safe and effective use of prescribed burning within the State of Texas as an agricultural, ranching, and land management practice, or provide education and other resources to its member or shareholders regarding land conservation and management.

(4) Governmental Certified and Insured Prescribed Burn Manager. A certified and insured prescribed burn manager employed by and acting on behalf of a government unit must apply for certification to act as a certified and insured prescribed burn manager as an authorized employee of a governmental unit. A governmental certified and insured prescribed burn manager is limited to conducting prescribed burns while acting in the course and scope of his or her duties as an employee of the governmental unit.

(b) The Board shall have sole and absolute discretion to determine whether an applicant meets the requirements necessary for the category of certification.

(c) Additional insurance requirements may apply to each category as determined by the Board.

§225.3. Minimum Standards for Prescribed Burning.

(a) TCEQ regulates outdoor burning in Texas. TCEQ requirements may be found at Texas Administrative Code, Title 30, Chapter 111, Subchapter B (relating to Outdoor Burning).

(b) The prescribed burning standards established by the Board represent the minimum requirements for conducting prescribed burning in the state of Texas as a certified and insured prescribed burn manager. These standards are established to ensure that every reasonable precaution is taken to prevent prescribed burns from escaping the perimeter of the burn area and to minimize the effects of smoke emissions as outlined in the written prescribed burn plan. The standards do not, and are not intended to, preempt or supersede requirements established by state, federal, or private natural resource management organizations, but rather, are intended to serve as a baseline for effectively planning and conducting prescribed burns as a certified and insured prescribed burn manager.

§225.4. Duty to Report.

(a) An applicant or a certified and insured prescribed burn manager must:

(1) timely respond to all requests for information from the Board regarding an application, renewal, insurance, or prescribed burning activities conducted by the certified and insured prescribed burn manager; and

(2) notify the Department within 30 days of any change in the information provided as part of the application for certification.

(b) If a certified and insured prescribed burn manager fails to timely report the information as required by subsection (a) of this section, a certified and insured prescribed burn manager is subject to administrative sanctions as set forth in §§153.102 - 153.104 of the Natural Resources Code, including the enforcement rules and schedule of disciplinary sanctions adopted by the Department.

(c) Failure to provide information required in this section may be grounds for denial of an application or may result in the suspension or revocation of a certification.

§225.5. Public Information Act.

All information submitted to the Board under this title is subject to the Public Information Act (PIA), Chapter 552, Texas Government Code, and may be disclosed to the public upon written request submitted to the Board or the Department. Applications for certification and renewal, including submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies.

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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Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
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For further information, please call: (512) 463-4075

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CHAPTER 226. STANDARDS FOR CERTIFIED PRESCRIBED BURN MANAGERS

The Board of Directors (Board) of the Prescribed Burning Board (PBB) of the Texas Department of Agriculture (TDA) proposes to repeal §§226.1 - 226.6, concerning standards for certified

prescribed burn managers, and simultaneously proposes new §§226.1 - 226.7, concerning requirements for certification by the board. The repeals and new sections are proposed to consolidate and reorganize existing rules and present them to the public and the regulated industry in a more easily understandable format and to make changes based on Board and legislative action. The proposed new sections provide applicant certification categories, eligibility criteria, continuing fire training requirements, and PBB program administration.

Nonsubstantive revisions have been made to the rules, including replacing references to "continuing education units" with "continuing fire training," the standardized term for the industry, and correcting previous references to "certified prescribed burn manager" to "certified and insured prescribed burn manager", to make the rules consistent with current law and amendments made to current law by the passage of Senate Bill 702, 83rd Legislature, Regular Session, 2013. In addition, the following, more substantive, changes have been made. New §226.3 (currently §227.2), relating to experience, was revised by the Board to require that an applicant meet the qualifications necessary for certification within each eco-region. There is not currently any reference to experience requirements for each region or eco-region. A legal reference relating to late fees for renewals submitted after the expiration date, as well as a provision that fees paid for an application that is denied or void will not be refunded, is added in new §226.5 (currently in §227.4), relating to Fees. New §226.7 (currently §227.8), relating to reciprocity of certification, adds provisions that those applicants for reciprocity would have to comply with Texas insurance and training requirements.

Provisions of existing §§226.1 and 226.4 - 226.6 are relocated to other chapters under Part 13 and further revised. Those changes are addressed under the appropriate chapter preamble.

David Kostroun, chief administrator for agriculture and consumer protection, has determined that for the first five years the proposed repeal and new sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal.

Mr. Kostroun has also determined that for each year of the first five years the proposed repeal and new sections are in effect, the public benefit anticipated as a result of enforcing or administering the proposed repeal and new sections will be clarification regarding eligibility, training requirements, and certification criteria. There will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the proposed repeal and new sections.

Written comments on the proposal may be submitted to David Kostroun, Agriculture and Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

4 TAC §§226.1 - 226.6

(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 Prescribed Burning Board, Texas Department of Agriculture, or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 226 is proposed under Natural Resources Code (the Code), §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by the proposal.

§226.1. Minimum Requirements.

§226.2. Personnel Requirements.

§226.3. Notification Requirements.

§226.4. Insurance Requirements.

§226.5. Development of Written Prescribed Burn Plan.

§226.6. Requirements for Certified Prescribed Burn Managers Conducting Burns During a County Burn Ban.

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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Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
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For further information, please call: (512) 463-4075

CHAPTER 226. REQUIREMENTS FOR CERTIFICATION BY THE BOARD

4 TAC §§226.1 - 226.7

New Chapter 226 is proposed under Natural Resources Code, §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by the proposal.

§226.1. Application for Certification.

(a) To be eligible for certification as a prescribed burn manager, an individual must submit the following to the Department:

(1) a signed application on a form prescribed by the Board;

(2) the required fee, set forth in §226.5 of this title (relating to Fees);

(3) proof of insurance coverage that meets the minimum requirements of §227.1 of this title (relating to Minimum Insurance Requirements);

(4) documentation of training, as set forth in §226.3 of this title (relating to Experience), for the particular region in which the applicant seeks certification; and

(5) documentation of experience, as set forth in §226.4 of this title (relating to Training), for the particular region in which the applicant seeks certification.

(b) In accord with §2.1 of this title (relating to Application for a License), an incomplete application for certification shall become void on the one-year anniversary of the submission of the incomplete application and an applicant will be required to resubmit the application. This action is not a denial of a license for any purpose under the Texas Government Code, the Texas Agriculture Code, or these rules.

§226.2. Term of Certification.

(a) A certification shall be effective for a period of two years, contingent on compliance with all qualifications required under the Natural Resources Code, Chapter 153 and the rules adopted by the Board thereunder, including continuing training and insurance verification requirements.

(b) A certified and insured prescribed burn manager must renew the certification prior to the expiration every two years.

§226.3. Experience.

(a) To be certified in an eco-region as a certified and insured prescribed burn manager, an applicant must demonstrate the following minimum level of experience:

(1) three years of prescribed burning in the specific eco-region; or

(2) three years of prescribed burning with a fuel type specific to the eco-region; and, which includes:

(3) a minimum of 30 days of prescribed burns, with at least 5 of those days as the individual responsible for all aspects of the prescribed burn.

(b) An individual that submits documentation of achievement of NWCG Prescribed Burn Boss Type 2 (RXB2) meets the experience qualifications required by this section. An applicant qualified as a RXB2 must also complete the training course for each specific eco-region for which certification is sought.

(c) The Board may determine that other proof of experience submitted may qualify to meet the requirements of this section, or that additional experience is needed to meet the requirements of this section.

(d) There shall be no exception to the requirement of experience for any individual seeking certification as a certified and insured prescribed burn manager.

§226.4. Training.

(a) To be eligible for certification as a prescribed burn manager, an applicant must successfully complete the certified and insured prescribed burn training course approved by the Board and any required specialty course(s) for each eco-region in which the applicant is seeking certification. Required course fees are the responsibility of the applicant and must be paid directly to the sponsor providing the training.

(b) All training required by the Board shall be designed to cover the information necessary for an applicant to demonstrate competency to conduct and supervise a prescribed burn in a safe and effective manner.

(c) Minimum training curriculum shall include materials approved by the Board.

§226.5. Fees.

(a) All applicants for certification or renewal must submit a $500 certification fee to the Department.

(b) Fees will be prorated based on when the application for certification is submitted, as outlined on the application.

(c) A fee paid in association with a void application or denied renewal shall not be refunded.

(d) Renewal fees submitted after the expiration date of the certification are subject to late fees prescribed in §12.024 of the Texas Agriculture Code.

§226.6. Renewal of Certification.

(a) At least 30 days prior to the expiration of a certification for prescribed burn manager, the Department will attempt to send notice to the certified and insured prescribed burn manager at the last known contact information provided to the Department.

(b) To be eligible for certification renewal, a certified and insured prescribed burn manager must submit the following to the Department:

(1) the certification renewal fee;

(2) certification of completion of required six hours of CFT credits for the two-year period preceding the renewal; and

(3) proof of liability insurance coverage.

(c) If a prescribed burn manager seeking renewal under this section fails to meet the CFT requirements, the application for renewal will not be approved until the applicant can demonstrate attainment of the minimum number of CFT credits.

(d) A certified and insured prescribed burn manager may file a written request for an extension of time for compliance with any deadline in these rules. Such request for extension may be granted by the Board if the applicant files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection. Good cause includes extended illness, extended medical disability, or other extraordinary hardship which is beyond the control of the certified and insured prescribed burn manager.

(e) A prescribed burn manager who fails to satisfy all requirements necessary for certification within one year following the expiration of the certification must submit a new application for certification.

§226.7. Reciprocity of Certification.

(a) The Board may enter into a memorandum of agreement with the state(s) of New Mexico, Oklahoma, and/or Louisiana, or a federal agency for reciprocity in certification of prescribed burn managers.

(b) Applicants seeking reciprocity in certification must submit an application, including fee, demonstrating that the applicant:

(1) meets training and experience requirements as required by Chapter 228 of this title (relating to Procedures for Certified Prescribed Burn Managers); and

(2) meets insurance coverage requirements set forth in §227.1 of this title (relating to Minimum Insurance Requirements) by maintaining a liability insurance policy demonstrating coverage of at least $1 million per occurrence, and $2 million aggregate.

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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Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 463-4075

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CHAPTER 227. CERTIFICATION, RECERTIFICATION, RENEWAL AND RECORDS

The Board of Directors (Board) of the Prescribed Burning Board (PBB) of the Texas Department of Agriculture (TDA) proposes to repeal Chapter 227, Subchapter A, §§227.1 - 227.8, concerning certification requirements; Subchapter B, §§227.10 - 227.16, concerning continuing education for recertification/renewal of certification; and Subchapter C, §227.20, concerning record-keeping. The Board simultaneously proposes new Chapter 227, §§227.1 - 227.4, concerning requirements for certified and insured prescribed burn managers. The repeals and new sections are proposed to consolidate and reorganize existing rules and present them to the public and the regulated industry in a more easily understandable format and to make changes based on Board and legislative action. The proposed new sections provide applicant certification categories, eligibility criteria, continuing fire training requirements, and PBB program administration.

Nonsubstantive changes have been made to the existing rules, including replacing references to "continuing education units" with "continuing fire training," the standardized term for the industry, and the correct previous references to "certified prescribed burn manager" to "certified and insured prescribed burn manager", to make the rules consistent with current law and amendments made to current law by the passage of Senate Bill 702, 83rd Legislature, Regular Session, 2013. In addition, the following, more substantive, changes have been made. New §227.1 (currently §226.4 and §227.5), relating to minimum insurance requirements, consolidates the requirements set forth in the current rules and provides for a self-insurance program for governmental units that meets Board requirements, in lieu of an insurance policy. This provision is added to comply with the passage of Senate Bill 764, 83rd Legislature, Regular Session (2013). New §227.2, relating to limitations on certain categories of certified and insured prescribed burn managers, is added to provide restrictions on not-for-profit and governmental unit sponsored CPBMs to prevent them from burning at any time other than as prescribed in their categorical description. New §227.3 (currently §227.1), relating to continuing fire training required, clarifies what is required for renewal--six hours of approved activities within the two-year certification period. Existing §227.3, relating to exceptions/grandfathering of prescribed burn managers, is proposed for repeal without being incorporated into the new sections as there are no exceptions and the section is no longer needed. The new section sets forth minimum requirements that must be met and demonstrated with final approval by the Board before such credit may be received.

Provisions of existing §§227.2, 227.4, 227.5, 227.8, 227.14, and 227.15 are relocated to other chapters under Part 13 and further revised. Those changes are addressed under the appropriate chapter preamble.

David Kostroun, chief administrator for agriculture and consumer protection, has determined that for the first five years the proposed repeal and new sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal.

Mr. Kostroun has also determined that for each year of the first five years the proposed repeal and new sections are in effect, the public benefit anticipated as a result of enforcing or administering the proposed repeal and new sections will be clarification regarding eligibility, training requirements, and certification criteria. There will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the proposed repeal and new sections.

Written comments on the proposal may be submitted to David Kostroun, Agriculture and Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER A. CERTIFICATION REQUIREMENTS

4 TAC §§227.1 - 227.8

(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 Prescribed Burning Board, Texas Department of Agriculture, or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 227, Subchapter A, is proposed under Natural Resources Code (the Code), §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by the proposal.

§227.1. Training.

§227.2. Experience.

§227.3. Exceptions/Grandfathering of Prescribed Burn Managers.

§227.4. Application; Fees.

§227.5. Proof of Insurance.

§227.6. Categories of Certification.

§227.7. Term of Certification.

§227.8. Reciprocity of Certification.

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

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Dolores Alvarado Hibbs
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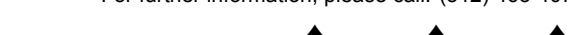

SUBCHAPTER B. CONTINUING EDUCATION FOR RECERTIFICATION/RENEWAL OF CERTIFICATION

4 TAC §§227.10 - 227.16

(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 Prescribed Burning Board, Texas Department of Agriculture, or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 227, Subchapter B, is proposed under Natural Resources Code (the Code), §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by the proposal.

§227.10. Recertification Requirements.

§227.11. Approved Continuing Education Activities.

§227.12. Board Approval, Assignment of Credits.

§227.13. Eligibility Requirements for Continuing Education Units.

§227.14. Suspension; Denial of Approval.

§227.15. Responsibilities of CEU Sponsors.

§227.16. Responsibilities of Certified Prescribed Burn Managers.

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 August 29, 2013.

TRD-201303656
Dolores Alvarado Hibbs
General Counsel
General Counsel, Texas Department of Agriculture
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 463-4075

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SUBCHAPTER C. RECORDKEEPING

4 TAC §227.20

(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 Prescribed Burning Board, Texas Department of Agriculture, or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 227, Subchapter C, is proposed under Natural Resources Code (the Code), §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by the proposal.

§227.20. Records.

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

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Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
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For further information, please call: (512) 463-4075

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CHAPTER 227. REQUIREMENTS FOR CERTIFIED AND INSURED PRESCRIBED BURN MANAGERS

4 TAC §§227.1 - 227.4

New Chapter 227 is proposed under Natural Resources Code, §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by the proposal.

§227.1. Minimum Insurance Requirements.

(a) At all times during the certification period, a certified and insured prescribed burn manager must maintain liability insurance coverage that insures the certified and insured prescribed burn manager for damages to any persons or any property occurring as a result of prescribed burning activities conducted under Natural Resources Code, Chapter 153, and the rules adopted thereunder, in the following minimum amounts:

(1) at least $1 million of liability coverage for each single occurrence of bodily injury to or destruction of property; and

(2) a policy period minimum aggregate limit of at least $2 million.

(b) Documentation of any conditions, endorsements, exceptions or limitations to the liability insurance policy must be must be disclosed to the Board or its designee.

(c) The following is considered valid documentation to demonstrate proof of coverage:

(1) certificate of insurance from an insurance company, including the declaration page and detailed policy information; or

(2) a document approved by the Board.

(d) In lieu of a liability insurance coverage policy, a certified and insured prescribed burn manager sponsored by a governmental unit may submit proof of minimum coverage requirements through a self-insurance program that meets the minimum coverage requirements of subsection (a) of this section. The governmental unit must submit:

(1) a certificate of self-insurance; or

(2) a letter certifying the existence of a fund or program of the governmental unit.

(e) By December 31 annually, each certified and insured prescribed burn manager must submit proof of minimum coverage requirements demonstrating compliance with the requirements set forth in subsection (a) or (d) of this section.

(f) A certified and insured prescribed burn manager must immediately notify the Department in writing in the event of a change,

reduction, lapse, or cancellation of liability insurance coverage. If liability insurance coverage lapses or falls below the minimum requirements set forth in subsection (a) of this section, the certification may be suspended or revoked, in accordance with the procedures set forth in Chapter 4, Subchapter A of this title (relating to Enforcement, Investigation, Penalties and Procedures).

§227.2. Limitations on Certain Categories of Certified and Insured Prescribed Burn Managers.

(a) A Certified and Insured Prescribed Burn Manager sponsored by a prescribed burning organization may only engage in prescribed burning on property owned or leased by the prescribed burning organization, or on property owned or leased by a person who is a member of the prescribed burning organization and may not charge fees for prescribed burning. This requirement is not intended to prevent a landowner from burning on the landowner's property.

(b) A Certified and Insured Prescribed Burn Manager sponsored by a governmental unit is limited to prescribed burning on behalf of the sponsoring governmental unit while employed by and acting in the course and scope of his or her duties for the governmental unit.

§227.3. Continuing Fire Training Required.

To be eligible for renewal of certification, a certified and insured prescribed burn manager must complete a minimum of six hours of approved CFT activities during the two-year certification period.

§227.4. Maintenance of Prescribed Burn Records.

(a) A certified and insured prescribed burn manager must maintain the following records:

(1) a current certificate for all insurance maintained by the certified and insured prescribed burn manager that meets the requirements of §153.082 of the Natural Resources Code and §227.1 of this title (relating to Minimum Insurance Requirements), together with a complete copy of any applicable policy or policies, along with all endorsements, exclusions or limitations issued with respect to such policy or policies;

(2) the current certificate reflecting status as a certified and insured prescribed burn manager;

(3) certificates of completion for all approved CFT activities completed during the current certification period, on a form provided by the CFT sponsor; and

(4) documentation of all burn experience, including any training not applicable toward CFT credit, obtained during the current certification period.

(b) A certified and insured prescribed burn manager must also maintain a prescribed burn file for each prescribed burn conducted.

(1) For each prescribed burn, the prescribed burn file must include:

(A) the written burn plan for the prescribed burn;

(B) documentation of notice to adjacent landowners and TCEQ, if required by §153.047(4) of the Natural Resources Code and §228.2 of this title (relating to Notification Requirements Prior to Prescribed Burns);

(C) documentation of notice to the county sheriff's department and local fire authorities, if any, as recommended by §228.2 of this title;

(D) documentation of notice to the Texas A&M Forest Service, prior to burning for forest management purposes, if applicable, as required by Title 30, Part 1, Chapter 111, Subchapter B, §111.219 of the Texas Administrative Code (relating to General Requirements for Allowable Outdoor Burning); and

(E) documentation of notice to TCEQ regarding coastal salt-marsh burning, if applicable, as required by Title 30, Part 1, Chapter 111, Subchapter B, §111.211 of the Texas Administrative Code (relating to Exception for Prescribed Burn).

(2) For prescribed burns conducted during a burn ban, the prescribed burn file must also include:

(A) notices required by §228.4 of this title (relating to Conducting Burns During a Burn Ban); and

(B) a completed burn checklist for the prescribed burn conducted when a county burn ban is in effect.

(c) The records required by subsections (a) and (b) of this section shall be made available to the Department for inspection at the location of such records upon reasonable notice by the Department.

(d) Records required by subsections (a) and (b) of this section shall be kept for the longer of five years from the date of original issuance, or for so long as any complaint, litigation, or Department investigation is pending against the certified and insured prescribed burn manager.

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 August 29, 2013.

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Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
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For further information, please call: (512) 463-4075

CHAPTER 228. TRAINING FOR CERTIFIED PRESCRIBED BURN MANAGERS

The Board of Directors (Board) of the Prescribed Burning Board (PBB) of the Texas Department of Agriculture (TDA) proposes to repeal §§228.1 - 228.4, concerning training for certified prescribed burn managers, and simultaneously proposes new §§228.1 - 228.4, concerning procedures for certified prescribed burn managers. The repeals and new sections are proposed to consolidate and reorganize existing rules and present them to the public and the regulated industry in a more easily understandable format and to make changes based on Board and legislative action. The proposed new sections provide applicant certification categories, eligibility criteria, continuing fire training requirements, and PBB program administration.

Nonsubstantive revisions have been made to the rules, including replacing references to "continuing education units" with "continuing fire training," the standardized term for the industry, and correcting previous references to "certified prescribed burn manager" to "certified and insured prescribed burn manager", to make the rules consistent with current law and amendments made to current law by the passage of Senate Bill 702, 83rd Legislature, Regular Session, 2013. In addition, the following, more substantive, changes have been made. In new §228.1, relating to written prescribed burn plan, the Board incorporated current §226.1 and §226.5 and revised the current reference

to "smoke intrusions" to refer to "escaped fires and smoke management" to better address the needs for safety and contingency plans. In new §228.4 (currently §226.6), relating to conducting burns during a burn ban, the Board added clarifying language to subsection (d) and added the requirement that the CPBM notify the local emergency response dispatch office.

David Kostroun, chief administrator for agriculture and consumer protection, has determined that for the first five years the proposed repeal and new sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal.

Mr. Kostroun has also determined that for each year of the first five years the proposed repeal and new sections are in effect, the public benefit anticipated as a result of enforcing or administering the proposed repeal and new sections will be clarification regarding eligibility, training requirements, and certification criteria. There will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the proposed repeal and new sections.

Written comments on the proposal may be submitted to David Kostroun, Agriculture and Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

4 TAC §§228.1 - 228.4

(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 Prescribed Burning Board, Texas Department of Agriculture, or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 228 is proposed under Natural Resources Code (the Code), §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by the proposal.

§228.1. Nature/Content of Training.
§228.2. Training Requirements.
§228.3. Training Fees.
§228.4. Board Approval of Training.

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 August 29, 2013.

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Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
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For further information, please call: (512) 463-4075

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CHAPTER 228. PROCEDURES FOR CERTIFIED PRESCRIBED BURN MANAGERS

4 TAC §§228.1 - 228.4

New Chapter 228 is proposed under Natural Resources Code, §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by the proposal.

§228.1. Written Prescribed Burn Plan Required.

(a) To ensure effective planning necessary to achieve desired effects from prescribed burning, a written prescribed burn plan must be completed by the certified and insured prescribed burn manager in advance of the planned prescribed burn. The prescribed burn plan should provide reasonable assurance that the prescribed burn will be confined to the predetermined area and conducted in a manner that will accomplish the land management objectives.

(b) A written prescribed burn plan must include, at a minimum, the following information:

(1) purpose of burn;

(2) location and description of the area to be burned;

(3) personnel required for managing the fire;

(4) type and amount of vegetation to be burned;

(5) area (acres) to be burned;

(6) fire prescription and firing techniques, including smoke management components;

(7) safety and contingency plans addressing escaped fires and smoke management; and

(8) criteria the certified and insured prescribed burn manager will use for making burn/no burn decisions.

(c) For burns conducted during a burn ban, the Burn/Do Not Burn checklist described in subsection (b)(8) of this section must also be in writing.

§228.2. Notification Requirements Prior to Prescribed Burns.

(a) Prior to conducting prescribed burn activities, a certified and insured prescribed burn manager must:

(1) obtain written permission from the residents, owners, occupants or operators of structures containing sensitive receptors if they are located within 300 feet of and in the general direction downwind from the prescribed burn;

(2) provide the landowner or landowner's agent:

(A) proof of current insurance coverage applicable to the prescribed burn that meets the minimum requirements set forth in §227.1 of this title (relating to Minimum Insurance Requirements); and

(B) proof of current prescribed burn manager certification; and

(3) maintain the documentation required in paragraph (2) of this subsection on site at all times during a prescribed burn.

(b) Failure to comply with any of the notice requirements in subsection (a) of this section is a violation that may result in penalties under Chapter 4 of this title (relating to Prescribed Burning Board Enforcement Program).

(c) In addition to the TCEQ notification requirements set forth at Title 30, Chapter 111, Subchapter B of the Texas Administrative Code (relating to Outdoor Burning), the certified and insured prescribed burn manager is also responsible for compliance with additional notification requirements for prescribed burns which may vary by county, including local ordinances.

(d) It is strongly recommended that the certified and insured prescribed burn manager alert local officials by providing notice to the county sheriff's office and local fire authorities in proximity of the prescribed burn prior to burning.

§228.3. Personnel Required to Conduct a Prescribed Burn.

(a) In all cases covered by these rules, a certified and insured prescribed burn manager with insurance coverage as required by §227.1 of this title (relating to Minimum Insurance Requirements) must be present at all times during a prescribed burn.

(b) The certified and insured prescribed burn manager is responsible for ensuring that a sufficient number of qualified individuals are present to meet the personnel requirements set forth in the written prescribed burn plan for the protection and safety of persons and adjacent property.

(c) Personnel requirements for conducting prescribed burns vary depending on the size of the burn area, fuel volatility, and management of adjacent areas and it is the responsibility of the certified and insured prescribed burn manager to ensure compliance with this section.

§228.4. Conducting Burns During a Burn Ban.

(a) All TCEQ, state and local requirements for outdoor burning shall apply at all times.

(b) A certified and insured prescribed burn manager may not conduct a burn in a county in which a current Governor's and/or Presidential Declaration of Emergency or Disaster is in effect that expressly prohibits all outdoor burning.

(c) The certified and insured prescribed burn manager must provide written notification to the county commissioners court and the county judge, or designee, prior to the prescribed burn including the following:

(1) the location where the prescribed burn is to take place;

(2) the name of the certified and insured prescribed burn manager; and

(3) contact information for the certified and insured prescribed burn manager, including, but not limited to: address and emergency contact telephone numbers.

(d) The certified and insured prescribed burn manager must also provide notification prior to and upon completion of the burn to:

(1) the county sheriff's office;

(2) the TCEQ regional office;

(3) the TFS regional fire coordinator or local dispatch center;

(4) fire suppression entities serving the area located immediately within the jurisdiction where the burn is located; and

(5) the local emergency response dispatch office.

(e) When burning during a burn ban, all certified and insured prescribed burn managers are required to establish and adhere to a written Burn/Do Not Burn checklist.

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 August 29, 2013.

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Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
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For further information, please call: (512) 463-4075

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CHAPTER 229. EDUCATIONAL AND PROFESSIONAL REQUIREMENTS FOR LEAD INSTRUCTORS

The Board of Directors (Board) of the Prescribed Burning Board (PBB) of the Texas Department of Agriculture (TDA) proposes to repeal §229.1, concerning educational and professional requirements for lead instructors, and simultaneously proposes new §§229.1 - 229.5, concerning continuing fire training. The repeal and new sections are proposed to consolidate and reorganize existing rules and present them to the public and the regulated industry in a more easily understandable format and to make changes based on Board and legislative action. The proposed new sections provide applicant certification categories, eligibility criteria, continuing fire training requirements, and PBB program administration.

Nonsubstantive revisions have been made to the rules, including replacing references to "continuing education units" with "continuing fire training," the standardized term for the industry, and correcting previous references to "certified prescribed burn manager" to "certified and insured prescribed burn manager", to make the rules consistent with current law and amendments made to current law by the passage of Senate Bill 702, 83rd Legislature, Regular Session, 2013. In addition, the following, more substantive, changes have been made. New §229.2, relating to wildland firefighting, is added and provides that a CPBM may receive credit for wildland firefighting, up to three hours per two-year certification period. The new section sets forth minimum requirements that must be met and demonstrated with final approval by the Board before such credit may be received. New §229.4 (currently §227.14 and §227.15), relating to requirements for training activity sponsors, removes the provision concerning authorized agreements with governmental agencies for annual submission of continuing education for all agency employees. This is inapplicable to any of the categories of certification. The Board added clarifying language to the experience requirements for lead instructors found in §229.5 (currently §229.1).

David Kostroun, chief administrator for agriculture and consumer protection, has determined that for the first five years the proposed repeal and new sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal.

Mr. Kostroun has also determined that for each year of the first five years the proposed repeal and new sections are in effect, the public benefit anticipated as a result of enforcing or administering the proposed repeal and new sections will be clarification regarding eligibility, training requirements, and certification crite-

ria. There will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the proposed repeal and new sections.

Written comments on the proposal may be submitted to David Kostroun, Agriculture and Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

4 TAC §229.1

(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 Prescribed Burning Board, Texas Department of Agriculture, or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 229 is proposed under Natural Resources Code (the Code), §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by the proposal.

§229.1. Minimum Requirements for Lead Instructors.

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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Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
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For further information, please call: (512) 463-4075

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CHAPTER 229. CONTINUING FIRE TRAINING

4 TAC §§229.1 - 229.5

New Chapter 229, Continuing Fire Training, is proposed under Natural Resources Code, §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by the proposal.

§229.1. Eligible Continuing Fire Training Activities.

(a) Eligible continuing fire training activities may include:

(1) lectures;

(2) panel discussions;

(3) organized video or film with live instruction;

(4) field demonstrations; or

(5) other activities approved by the Board.

(b) The Board shall assign no more than one CFT credit for each hour of actual instruction time at an approved activity. No CFT credit will be given for time used to promote the sponsor or other activities of the sponsor or for time used for organizational, political, or other unrelated activities.

(c) Prior approval is not required for CFT courses conducted by the Department, NRCS, TAES, TAR, TAMU, TFS, TCEQ, TPWD, or TTU, provided that all requirements for course content provided in §229.3 of this title (relating to Approval of Continuing Fire Training Activity) are met.

(d) Department staff and Board members may observe and monitor approved activities at no cost to the Department or the Board.

§229.2. Wildland Firefighting.

(a) Wildland firefighting is an eligible activity that may satisfy mandatory CFT requirements for certified and insured prescribed burn managers. To receive CFT credit for wildland firefighting, the certified and insured prescribed burn manager must:

(1) be under the direction of a responsive organization that manages wildland fires which create a substantial risk of causing imminent harm to nearby property or persons;

(2) have been a requested resource assigned to a firefighting position upon check in;

(3) provide the incident commander with an Incident Personnel Performance Rating form upon assignment to be completed for documentation of the individual's performance; and

(4) submit an Incident Personnel Performance Rating form to a lead burn instructor or the Board for review.

(b) CFT credit for wildland firefighting activities may not exceed three hours per two-year certification period.

(c) Final approval of wildland firefighting activities by the Board is required to be eligible for CFT credit.

§229.3. Approval of Continuing Fire Training Activity.

(a) For a training activity to be approved as eligible for CFT credit, the activity must be submitted to the Board for approval.

(b) To be approved by the board, a sponsor must:

(1) submit a completed application to the Board at least 30 days prior to the date of the CFT activity;

(2) demonstrate that the CFT activity will be conducted by a qualified instructor;

(3) provide information demonstrating that the activity has significant educational or practical content to ensure competency of participants;

(4) utilize a Board-approved record keeping procedure to record attendance;

(5) demonstrate that all CFT activities relate to prescribed burning and will cover one or more of the following topics:

(A) safety factors;

(B) environmental consequences;

(C) burning techniques;

(D) equipment characteristics;

(E) laws and regulations;

(F) advanced technology; or

(G) smoke management.

(c) All CFT activities must comply with applicable federal and state laws, including the Americans with Disabilities Act requirements for access to activities.

(d) The Board or the Board chair will respond within 10 business days of receipt of the application and approve, deny, or request additional information from the sponsor.

(e) Approval of training courses is only valid for twelve months from the date of Board approval.

§229.4. Requirements for Training Activity Sponsors.

(a) A university, governmental agency, an association, a private independent business, or other qualified entity may be approved by the Board or Board Chair as a sponsor for a prescribed burn training activity. To be eligible to sponsor a CFT training activity, a sponsor must submit a written proposal to the Board which includes a detailed list of the subjects to be covered and the planned activities.

(b) Sponsors approved to conduct CFT activities must:

(1) submit a roster to the Department within 14 days of the completed activity, which contains, at a minimum, the name and current certificate number for certified and insured prescribed burn managers who successfully complete the activity;

(2) ensure that the training credits awarded correspond proportionately to the net instruction time; and

(3) distribute a certificate of completion on the date of the activity to eligible certified and insured prescribed burn managers which includes, but is not limited to:

(A) the name of the sponsor;

(B) the name of the lead instructor;

(C) the lead instructor's phone number;

(D) the date and name of the approved activity;

(E) the name of the county in which the approved activity was held;

(F) the number of credit hours and type of credit earned; and

(G) the assigned course number.

(c) The Board may suspend or deny approval for any or all sponsored training courses if a sponsor fails to file a timely activity report, fails to provide the quality of activity required by the Board, or fails to comply with any other requirements for approval or that are a part of these rules.

§229.5. Requirements for Lead Instructors.

(a) A lead instructor must conduct an approved CFT course, but may utilize assistance from a training cadre, as the lead instructor deems appropriate.

(b) In order to be eligible to conduct a training course, a lead instructor must have:

(1) a minimum of 25 days of prescribed burns as the individual solely responsible for the prescribed burn;

(2) participated in any position on a burn, with a minimum of 50 days of burns, with at least 75% of those days on prescribed burns;

(3) a minimum of 35 days of prescribed burn management;

(4) taken or taught a Board approved certified and insured prescribed burn manger course or be qualified as a NWCG Prescribed Burn Boss Type 2 (RXB2) or higher; and

(5) made at least 10 presentations of technical information to groups in a formal setting.

(c) Lead instructors must be approved by the Board.

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

Filed with the Office of the Secretary of State on August 29, 2013.

TRD-201303661
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
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For further information, please call: (512) 463-4075

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TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 121. TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM

13 TAC §121.6

The Office of the Governor, Texas Film Commission (Commission) proposes an amendment to Chapter 121, §121.6, concerning Texas Moving Image Industry Incentive Program grant awards.

The proposed amendment to §121.6 clarifies the grant percentage rate for qualifying Commercials, Educational or Instructional Videos that spend at least $100,000 but less than $1,000,000, which qualify for grant awards pursuant to Texas Government Code, §485.023.

Heather Page, Director of the Texas Film Commission, has determined that for the first five year period that the proposed rule is in effect there will be no fiscal implications to the state or to local governments as a result of enforcing or administering the proposed rule. No cost to either government or the public will result from the proposed rule. There will be no impact on small businesses or micro-businesses.

Ms. Page has also determined that for the first five year period that the proposed rule is in effect the public benefit anticipated as a result of the proposed rule is a clearer understanding of the program's scope and participation in the program. No economic costs are anticipated to persons who are required to comply with the proposed rule.

Written comments on the proposed amendment may be hand delivered to Office of the Governor, General Counsel Division, 1100 San Jacinto, Austin, Texas 78701; mailed to P.O. Box 12428, Austin, Texas 78711-2428; or faxed to (512) 463-1932 and should be addressed to the attention of David Zimmerman, Assistant General Counsel. Comments must be received within 30 days of publication of the proposed amendment in the *Texas Register.*

The amendment is proposed pursuant to the Texas Government Code, §485.022, which directs the Commission to develop a procedure for the submission of grant applications and the awarding of grants, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

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

§121.6. Grant Awards.

(a) Feature Films, Television Programs, and Visual Effects Projects for Feature Films or Television Programs with total eligible in-state spending of:

(1) At least $250,000 but less than $1 million will be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least $1 million but less than $3.5 million will be eligible to receive a grant equal to 10% of eligible in-state spending.

(3) At least $3.5 million will be eligible to receive a grant equal to 20% of eligible in-state spending.

(b) Digital Interactive Media Productions with total eligible in-state spending of:

(1) At least $100,000 but less than $1 million will be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least $1 million but less than $3.5 million will be eligible to receive a grant equal to 10% of eligible in-state spending.

(3) At least $3.5 million will be eligible to receive a grant equal to 20% of eligible in-state spending.

(c) Reality Television Projects[~~, Commercials, Educational or Instructional Videos, and Visual Effects Projects for Commercials or Educational or Instruction Videos~~] with total eligible in-state spending of:

(1) At least $250,000 but less than $1 million will be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least $1 million will be [~~are~~] eligible to receive a grant equal to 10% of total eligible in-state spending.

(d) Commercials, Educational or Instructional Videos, and Visual Effects Projects for Commercials or Educational or Instruction Videos with total eligible in-state spending of:

(1) At least $100,000 but less than $1 million will be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least $1 million will be eligible to receive a grant equal to 10% of total eligible in-state spending.

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

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TRD-201303683
David Zimmerman
Assistant General Counsel
Texas Film Commission
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For further information, please call: (512) 465-5838

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER F. REGULATION OF TELECOMMUNICATIONS SERVICE

16 TAC §26.125

The Public Utility Commission of Texas (commission) proposes amendments to §26.125, relating to Automatic Dial Announcing Devices (ADADs). The proposed amendments to the rule and the Texas Permit Application form will clarify the permit procedure for ADADs and conforms the rule to changes embodied in Senate Bill 1040 to Public Utility Regulatory Act (PURA) §55.122 and §55.1225. Project Number 39492 is assigned to this proceeding.

James Kelsaw, Utility Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Kelsaw has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be a more streamlined permitting process for ADADs. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amended section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed.

Mr. Kelsaw has also determined that for each year of the first five years the proposed amendment is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, October 15, 2013. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendments and form may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days after publication. Sixteen copies of comments to the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 25 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 39492.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and

Supp. 2012) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and, specifically, PURA §55.129 which provides that an ADAD provider must obtain a permit from the commission.

Cross Reference to Statutes: Public Utility Regulatory Act, §14.002 and §§55.121 - 55.138.

§26.125. Automatic Dial Announcing Devices (ADADs).

(a) Purpose. The purpose of this section is to regulate the use of ADADs.

(b) Application. The provisions of this section apply to an ADAD used to make a telephone call that originates or terminates in the state of Texas.

(c) [~~(b)~~] Requirements for use of an ADAD. A person who operates an ADAD to make a telephone call in which the device plays a recorded message when a connection is completed to a telephone number must comply with the following requirements.

(1) An ADAD operator must obtain a permit from the commission and give written notice specifying the type of device to be connected to each telecommunications utility over whose system the device is to be used.

(2) The device must not be used for random number dialing or to dial numbers by successively increasing or decreasing integers. In addition, the device must not be used in a way such that two or more telephone lines of a multi-line business are engaged simultaneously.

(3) Within the first 30 seconds of the call, the ADAD message must clearly state the nature of the call, the identity of the business, individual, or other entity initiating the call, and the telephone number (other than that of the ADAD which placed the call) or address of the business, individual, or entity. This paragraph does not apply to the ADAD if the ADAD is used:

(A) for debt collection purposes in compliance with applicable federal law and regulations; and

(B) by a live operator for automated dialing for hold announcement purposes.

(4) The entire ADAD message must be delivered in a single language.

(5) The device must disconnect from the called person's line no later than five seconds after the call is terminated by either party or, if the device cannot disconnect within that period, a live operator must introduce the call and receive the oral consent of the called person before beginning the message. In addition, the device must comply with the line seizure requirements in 47 Code of Federal Regulations §68.318(c).

(6) The device, when used for solicitation purposes, must have a message shorter than 30 seconds or have the technical capacity to recognize a telephone answering device on the called person's line and terminate the call within 30 seconds.

~~[(7) All ADAD solicitors shall meet the requirements for telephone solicitors set forth in §26.126 of this title (relating to Telephone Solicitation).]~~

(7) [~~(8)~~] For calls terminating in Texas, the device must not be used to make a call:

(A) for solicitation before noon or after 9:00 p.m. on a Sunday or before 9:00 a.m. or after 9:00 p.m. on a weekday or a Saturday; or

(B) for collection purposes at an hour at which collection calls would be prohibited under the federal Fair Debt Collection Practices Act (15 United States Code §1692, *et seq.)*.

(8) [~~(9)~~] Calls may not be made to emergency telephone numbers of hospitals, fire departments, law enforcement offices, medical physician or service offices, health care facilities, poison control centers, "911" lines, or other entities providing emergency service. In addition, calls may not be made to telephone numbers of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment, any telephone numbers assigned to paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier, or any service for which the called party is charged for the call.

(9) [~~(10)~~] If during a call a cross-promotion or reference to a pay-per-call information service is made, the call must include:

(A) a statement that a charge will be incurred by a caller who makes a call to a pay-per-call information services telephone number;

(B) the amount of the flat-rate or cost-per-minute charge that will be incurred or the amount of both if both charges will be incurred; and

(C) the estimated amount of time required to receive the entire information offered by the service during a call.

(d) [~~(c)~~] Permit to operate an ADAD.

(1) An application for a permit to use one or more ADADs must be made using a form prescribed by the commission and must be accompanied by a fee of $50. A permit is valid for one year after its date of issuance. An application for a renewal permit shall be filed using the form prescribed by the commission, accompanied by a fee of $15, not less than 90 days prior to the expiration date of the current permit.

(2) Each application for the issuance or renewal of a permit under this section must contain the telephone number of each ADAD that will be used and the physical address from which the ADAD will operate in the format required by the commission. If the telephone number of an ADAD or the physical address from which the ADAD operates changes, the owner or operator of the ADAD shall notify the commission by certified mail in the required format of each new number or address not later than the 48th hour before the hour at which the ADAD will begin operating with the new telephone number or at the new address. If the owner or operator of an ADAD fails to notify the commission as required by this subsection within the period prescribed by this subsection, the permit is automatically invalid.

(3) In determining if a permit should be issued or renewed, the commission will consider the compliance record of the owner or operator of the ADAD. The commission may deny an application for the issuance or renewal of a permit because of the applicant's compliance record.

(4) A local exchange company (LEC) may obtain, on request to the commission, a copy of a permit issued under this section and of any changes relating to the permit.

(5) The commission may revoke a permit to operate an ADAD for failure to comply with this section.

(e) [~~(d)~~] Exceptions. This section does not apply to the use of an ADAD to make a telephone call:

(1) relating to an emergency or a public service under a program developed or approved by the emergency management coordinator of the county in which the call was received; [~~or~~]

(2) made by a public or private primary or secondary school system to locate or account for a truant student;[.]

(3) made by a municipality or a person calling on behalf of a municipality to deliver information to citizens of the municipality regarding public health, safety, or welfare issues; or

(4) made by an organization to a member of the organization.

(f) [~~(e)~~] Complaints, investigation, and enforcement.

(1) If the commission determines that a person has violated the requirements of this section, the telecommunications utility providing service to the user of the ADAD shall comply with a commission order to disconnect service to the person. The telecommunications utility may reconnect service to the person only on a determination by the commission that the person will comply with this section. The telecommunications utility shall give notice to the person using the ADAD of the telecommunications utility's intent to disconnect service not later than the third day before the date of the disconnection, except that if the ADAD is causing network congestion or blockage, the notice may be given on the day before the date of disconnection.

(2) A telecommunications utility may, without an order by the commission or a court, disconnect or refuse to connect service to a person using or intending to use an ADAD if the telecommunications utility determines that the device would cause or is causing network harm.

(3) A LEC that receives a complaint relating to the use of an ADAD shall send the complaint to the commission according to the following guidelines:

(A) the complaint shall be recorded on a form prescribed by the commission;

(B) the LEC shall inform the complainant that the complaint, including the identity of the complainant and other information relevant to the complaint, will be forwarded to the commission;

(C) the complaint form and any written complaint shall be forwarded to the commission within three business days of its receipt by the LEC.

(g) [~~(f)~~] Permit suspension/child support enforcement. In consideration of the Texas Family Code Annotated, Chapter 232, as it may be subsequently amended, which provides for the suspension of state-issued licenses for failure to pay child support, the commission shall follow the procedures set out in this subsection.

(1) Provision of information to a Title IV-D agency. Upon request, the commission shall provide a Title IV-D agency with the name, address, social security number, license renewal date, and other identifying information for each person who holds, applies for, or renews an ADAD permit issued by the commission. This information shall be provided in a format agreed to between the Title IV-D agency and the commission.

(2) Suspension of permit. Upon receipt of a final order issued by a court or a Title IV-D agency suspending an ADAD permit under the provisions of the Texas Family Code, Chapter 232, the commission shall immediately:

(A) record the suspension of the permit in the commission's files; and

(B) notify the telecommunications utility providing service to the user of an ADAD that the permit has been suspended.

(3) Service disconnection. Upon receipt of notification by the commission that a permit has been suspended under the provisions of this subsection, the telecommunications utility providing service to that user of an ADAD shall immediately disconnect service to that person.

(4) Refund of fees. A person who holds, applies for, or renews an ADAD permit issued by the commission that is suspended under the provisions of this subsection is not entitled to a refund of any fees paid under subsection (d) [~~(e)~~] of this section.

(5) Reinstatement. The commission may not modify, remand, reverse, vacate, or reconsider the terms of a final order issued by the court or a Title IV-D agency suspending a permit under the provisions of the Texas Family Code, Chapter 232. However, upon receipt of an order by the court or Title IV-D agency vacating or staying an order suspending a person's permit to operate an ADAD, the commission shall promptly issue or re-issue the affected permit to that person if that person is otherwise qualified for the permit and has paid the applicable fees as set out in subsection (d) [~~(e)~~] of this section.

(h) [~~(g)~~] Penalties. A person who operates an ADAD without a valid permit, with an expired permit, or with a permit that has been suspended under the provisions of subsection (g) [~~(f)~~] of this section or who otherwise operates the ADAD in violation of this section or a commission order, is subject to an administrative penalty of not more than $1,000 for each day or portion of a day during which the ADAD was operating in violation of this section. However, nothing in this subsection is intended to limit the commission's authority under the Public Utility Regulatory Act §15.021, *et seq.*

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 August 29, 2013.

TRD-201303637
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

16 TAC §§61.10, 61.20, 61.23, 61.30, 61.40, 61.48, 61.80, 61.120

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 60, §§61.10, 61.20, 61.23, 61.30, 61.40, 61.48, 61.80 and 61.120, regarding the combative sports program.

The proposed amendments are necessary to implement Senate Bill 618 (SB 618), 83rd Legislature, Regular Session (2013), which amended Texas Occupations Code, Chapter 2052.

The proposed amendments eliminate the ringside physician license type which required that a ringside physician file an application and pay a license registration fee to the Department. In place of the ringside physician licensing program, the proposed amendments allow the Department to assign, by agreement, individuals with an unrestricted and unlimited

Texas Medical Board license to combative sports events. The proposed rules also establish selection criteria and procedures for the assignment of individuals who agree to act as ringside physicians and timekeepers for combative sports events. In addition, the proposed amendments also eliminate the timekeeper license type and instead establish an appointment process for timekeepers assigned to combative sports events.

Proposed amendments to §61.10(15) redefine "ringside physician" to implement a change in law made by SB 618.

Proposed amendments to §61.20(a) eliminate the general requirement that timekeepers and ringside physicians be licensed or registered to implement a change in law made by SB 618.

Proposed amendments to §61.23 eliminate licensing requirements for timekeepers and ringside physicians to implement a change in law made by SB 618.

Proposed amendments to §61.30(g) establish selection criteria for the assignment of ringside physicians and timekeepers for combative sports events to implement a change in law made by SB 618.

Proposed amendments to §61.40(b) changes the term "registered" to "assigned" to implement a change in law made by SB 618.

Proposed amendments to §61.48 change the term "registered" to "assigned" to implement a change in law made by SB 618.

Proposed amendments to §61.80 eliminate the licensing fees for timekeeper and ringside physician to implement a change in law made by SB 618.

Proposed amendments to §61.120 change the term "registration" to "assignment" to implement a change in law made by SB 618.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no cost to state or local government as a result of enforcing or administering the proposed rules.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be safer combative sports events resulting from the Department's increased ability to provide greater safety to combative sports participants by ensuring that ringside physicians are qualified for the specific task of overseeing a combative sports event.

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

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; by facsimile to (512) 475-3032; or by email to erule@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, Chapters 51 and 2052, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 2052. No other statutes, articles, or codes are affected by the proposal.

§61.10. Definitions.

The following words and terms have the following meanings:

(1) - (14) (No change.)

(15) Ringside Physician--An individual who has an unrestricted and unlimited license [~~licensed~~] to practice medicine in this state and who by agreement, is assigned as the physician for a combative sports event [~~Texas Medical Board, and registered with the department~~].

(16) - (18) (No change.)

§61.20. General Licensing Requirements.

(a) Professional combative sports contestants, promoters, referees, judges, seconds, matchmakers, managers, [~~timekeepers, ringside physicians,~~] and event coordinators who officiate or participate in a regulated professional event authorized by the Code must be licensed or registered by the executive director. Referees [~~and ringside physicians~~] who officiate at regulated amateur events must also be licensed or registered by the executive director.

(b) - (e) (No change.)

§61.23. General Prohibitions.

(a) - (d) (No change.)

(e) A promoter may not act as, and may not be a timekeeper or licensed as[~~;~~] a referee[~~, timekeeper,~~] or judge. A promoter may be licensed as a manager and as a second. A promoter may be licensed as a contestant unless prohibited by Federal law.

(f) - (j) (No change.)

§61.30. Responsibilities and Authority of the Executive Director.

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

(g) Selection and Assignment of Ring Officials

(1) The executive director, or his designee, will assign ring officials [~~on a rotational basis from lists of licensees and registrants. Assignments will be made~~] to ensure the highest degree of safety for contestants. The department will assist ring officials [~~license holders and registrants~~] in developing expertise in the combative sports of their choice, to include training and shadow officiating.

(A) Ringside Physicians must hold a license as defined by §61.10(15); and

(B) Demonstrate by training, education, or experience, knowledge in the diagnoses and treatment of sports related trauma.

(2) To officiate at an assigned event, a ring official will be issued a department badge after executing a signed acknowledgement agreeing to the following terms.

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

(C) Failure to surrender the badge upon direction of the executive director or his designee may result in disciplinary action and removal from the pool of qualified ring officials [~~rotation list~~].

(3) The key determining factors for assigning ring officials are:

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

(C) the location of the ring official's [~~licensee's~~] residence; and

(D) (No change.)

(4) A ring official who declines to work an event may be removed from the pool of qualified ring officials[~~, will miss his rotation~~].

(5) The name of a ring official who declines to work an event five times in succession will be removed from the pool of qualified ring officials [~~taken off of the rotation list~~].

(6) A ring official who uses his badge to gain access to a regulated event to which he has not been assigned or who violates department rules or the code may be removed from the pool of qualified ring officials [~~rotation list~~].

(7) In order to be reinstated to the pool of qualified ring officials, a ring [~~on the rotation list, an~~] official may be required to complete additional training as determined by the executive director, in addition to any other qualifications.

[~~(8) If a ring official under this subsection substitutes for another who declined to work an event, the substituting official does not lose his place on the rotation list.~~]

(h) - (q) (No change.)

§61.40. Responsibilities of the Promoter.

(a) (No change.)

(b) A promoter shall:

(1) - (5) (No change.)

(6) Provide two ringside physicians, to be assigned [~~registered~~] by the department, for each event.

(7) Provide at least one [~~registered~~] physician to conduct pre-fight physicals. The department may require additional physicians depending on the event size. Provide a private area for the ringside physician to perform pre-fight examinations.

(8) - (10) (No change.)

(11) Provide no less than two private dressing rooms of adequate size for the contestants and their licensed managers, and seconds, and separate dressing rooms for male and female contestants. Only working department employees, contract inspectors, media, physicians, [~~licensed~~] working ring officials, promoter, matchmaker, manager and seconds will be allowed in the dressing rooms.

(12) - (16) (No change.)

(17) Pay by check or money order the licensing fee of any contestant, second, or manager, [~~or ringside physician~~] who intends to participate in a scheduled combative sports event and who is not licensed at the time of the event weigh-in.

(18) - (19) (No change.)

(c) - (f) (No change.)

§61.48. Responsibilities of Amateur Combative Sports Associations.

(a) - (g) (No change.)

(h) An ACSA conducting an event shall:

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

(3) Provide two physicians to be assigned[~~, that are registered~~] by the Department for each event.

(4) - (11) (No change.)

(i) - (j) (No change.)

§61.80. Fees.

(a) The annual fee shall accompany each license or registration application or renewal as follows.

(1) - (7) (No change.)

[~~(8) Timekeeper--$30~~]

[~~(9) Ringside Physician--$25~~]

(8) [~~(10)~~] Amateur Combative Sports Association--$50

(9) [~~(11)~~] Event Coordinator--$200

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

§61.120. Medical Advisory Committee.

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

(d) The Committee shall make recommendations to the Department concerning:

(1) physical tests for contestants; and

(2) assignment [~~registration~~] requirements for ringside physicians.

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 August 29, 2013.

TRD-201303645
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.17

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.17(e), relating to Scope of Practice, to clarify that all therapeutic modalities provided by Doctors of Chiropractic in Texas must comply with the chiropractic scope of practice as defined by the Texas Occupations Code (the Chiropractic Act).

The Board proposes this amendment to make explicitly clear that any therapeutic modality used by a Doctor of Chiropractic for treatment of a chiropractic patient must be done in accordance with the legislatively defined scope of practice for chiropractic. While this concept seems self-evident, the Board gets a number of questions from licensees indicating that some do not understand that any treatment rendered to a patient must be within the bounds of statutory scope of practice.

Yvette Yarbrough, Executive Director of the Texas Board of Chiropractic Examiners, has determined that, for each year of the

first five years this amendment will be in effect, there will be no additional cost to state or local governments. Ms. Yarbrough has also determined that there will be no adverse economic effect to individuals and small or micro-businesses during the first five years this amendment will be in effect.

Ms. Yarbrough has also determined that, for each year of the first five years this amendment will be in effect, the public benefit of this amendment will be explicit clarity in the limit of scope of practice in the practice of chiropractic.

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

This amendment is proposed under Texas Occupations Code §201.152, relating to rules, and §201.002, relating to the practice of chiropractic. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.002 defines the practice of chiropractic and the limits of chiropractic scope of practice.

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

§75.17. Scope of Practice.

(a) - (d) (No change.)

(e) Treatment Procedures and Services.

(1) (No change.)

(2) In order to provide therapeutic care for a patient or patient population, licensees are authorized to use the therapeutic modalities listed in this paragraph. All therapeutic modalities provided by Doctors of Chiropractic in Texas must comply with the chiropractic scope of practice as defined by the Texas Occupations Code §201.002.[:]

(A) Osseous [~~osseous~~] and soft tissue adjustment and manipulative techniques;

(B) Physical [~~physical~~] and rehabilitative procedures and modalities;

(C) Acupuncture [~~acupuncture~~] and other reflex techniques;

(D) Exercise [~~exercise~~] therapy;

(E) Patient [~~patient~~] education;

(F) Advice [~~advice~~] and counsel;

(G) Diet [~~diet~~] and weight control;

(H) Immobilization [~~immobilization~~];

(I) Splinting [~~splinting~~];

(J) Bracing [~~bracing~~];

(K) Therapeutic [~~therapeutic~~] lasers (non-invasive, nonincisive), with adequate training and the use of appropriate safety devices and procedures for the patient, the licensee and all other persons present during the use of the laser;

(L) Durable [~~durable~~] medical goods and devices;

(M) Homeopathic [~~homeopathic~~] and botanical medicines, including vitamins, minerals,[;] phytonutrients, antioxidants, enzymes, neutraceuticals, and glandular extracts;

(N) Non-prescription [~~non-prescription~~] drugs;

(O) Referral [~~referral~~] of patients to other doctors and health care providers; and

(P) Other [~~other~~] treatment procedures and services consistent with the practice of chiropractic.

(3) (No change.)

(f) (No change.)

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

Filed with the Office of the Secretary of State on August 29, 2013.

TRD-201303636
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 305-6716

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PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 100. GENERAL PROVISIONS

22 TAC §100.3

The State Board of Dental Examiners (Board) proposes amendments to §100.3, concerning the organization and structure of the Board of Dental Examiners. The amendments will define the organization and structure of the Board of Dental Examiners and implement the requirements of House Bill 3201 (83rd Legislature, Regular Session).

Julie Hildebrand, Executive Director, has determined that for the first five-year period the proposed rule is in effect enforcing or administering the rule will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Hildebrand has determined that for the first five-year period the proposed rule is in effect enforcing or administering the rule will ensure the protection of public health and safety. Ms. Hildebrand has determined that for the first five-year period the proposed rule is in effect enforcing or administering the rule will not have foreseeable economic costs to persons or small businesses who are required to comply with the rule.

Ms. Hildebrand has determined that for the first five-year period the proposed rule is in effect enforcing or administering the rule will have no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendments may be submitted to Sarah Carnes-Lemp, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732; fax: (512) 463-7452; e-mail: sarah@tsbde.texas.gov no later than 30 days from the date that the proposed amendments are published in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §254.001(a), which gives the Board authority to adopt rules nec-

essary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

§100.3. Organization and Structure.

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

~~[(g) Expert Testimony. A member of the board may not serve as an expert witness in a suit involving a health care liability claim against a dentist for injury to or death of a patient.]~~

(g) ~~[(h)]~~ Professional Conduct. A board member should strive to achieve and project the highest standards of professional conduct. Such standards include:

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

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

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

~~[(4) A board member should not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice. A board member should disclose any potential employment as an expert witness to and seek approval of the board's executive committee. When providing expert testimony in any matter, a board member should state that any opinion of the board member is not on behalf of or approved by the board and should not claim special expertise because of board membership.]~~

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

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 August 29, 2013.

TRD-201303675
Julie Hildebrand
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 475-0989

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CHAPTER 101. DENTAL LICENSURE

22 TAC §101.6

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Dental Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The State Board of Dental Examiners (Board) proposes the repeal of §101.6, concerning the Board's authority to license individuals who are military personnel or spouses of military personnel, implementing requirements of Senate Bill 162 (83rd Legislature, Regular Session). The proposed repeal is necessary in order to propose a new rule to incorporate requirements of Senate Bill 162.

Julie Hildebrand, Executive Director, has determined that for the first five-year period the proposed repeal is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the repeal of this rule.

Ms. Hildebrand has also determined that for the first five-year period the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal will be to help persons who are military personnel get licensed in a timely fashion. Ms. Hildebrand has determined that for the first five-year period the proposed repeal is in effect, there are no foreseeable costs to persons or small businesses who are required to comply with the repeal. There is no foreseeable impact on employment in any regional area where the repeal is enforced or administered.

Comments on the proposed repeal may be submitted to Sarah Carnes-Lemp, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732; fax: (512) 463-7452; e-mail: sarah@tsbde.texas.gov no later than 30 days from the date that the proposed repeal is published in the *Texas Register.*

The repeal is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

§101.6. Licensing for Military Spouses.

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 August 29, 2013.

TRD-201303668
Julie Hildebrand
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 475-0989

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22 TAC §101.6

The State Board of Dental Examiners (Board) proposes new §101.6, concerning the Board's authority to license individuals who are military personnel or spouses of military personnel and to implement requirements of Senate Bill 162 (83rd Legislature, Regular Session). This proposed new rule will implement the requirements of Senate Bill 162 which allows person with military background get licensed in a timely fashion.

Julie Hildebrand, Executive Director, has determined that for the first five-year period the new rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the new rule.

Ms. Hildebrand has also determined that for the first five-year period the new rule is in effect, the public benefit anticipated as a result of administering this section will be to help persons who are military personnel get licensed in a timely fashion. Ms. Hildebrand has determined that for the first five-year period the new rule is in effect, there are no foreseeable costs to persons or small businesses who are required to comply with the rule. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Sarah Carnes-Lemp, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732; fax: (512) 463-7452; e-mail: sarah@ts-bde.texas.gov no later than 30 days from the date that the new rule is published in the *Texas Register.*

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

§101.6. Dental Licensing for Military Service Members, Military Veterans, and Military Spouses.

(a) Definitions.

(1) "Military service member" means a person who is currently servicing in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) "Military spouse" means a person who is married to a military service member who is currently on active duty.

(3) "Military Veteran" means a person who has served in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) Military Service Members and Military Veterans. The Board shall give credit to an applicant who is a Military service member or Military veteran for any verified military service, training, or education toward the licensing requirements, other than an examination requirement, including, but not limited to, education, training, certification, or a course in basic life support. The Board may not give credit if the applicant holds a restricted license issued by another jurisdiction or has an unacceptable criminal history according to Texas Occupations Code, Chapter 53 (relating to Consequences of Criminal Conviction) or §101.8 of this title (relating to Persons with Criminal Backgrounds).

(c) Military Spouses.

(1) The Board shall process an application from a Military spouse as soon as practicable after receiving such application.

(2) The Board shall issue a license to a qualified Military spouse applicant who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in this state. The initial license has the term established by §101.5 of this title (relating to Staggered Dental Registrations), or a term of 12 months from the date the license is issued, whichever term is longer.

(3) The Board shall notify in writing or by electronic means an individual granted a license under paragraph (2) of this subsection of the requirements for renewal.

(4) The Board may allow a Military spouse who within the five years preceding the application date held the license in this state that expired while the applicant lived outside of this state for at least six months, to demonstrate competency by alternative methods in order to meet the requirements for obtaining a dental license issued by the Board. For purposes of this section, the standard method of demonstrating competency is the specific examination, education, and/or experience required to obtain a dental license.

(5) In lieu of the standard method(s) of demonstrating competency for a dental license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:

(A) education;

(B) continuing education;

(C) examinations (written and/or practical);

(D) letters of good standing;

(E) letters of recommendation;

(F) work experience; or

(G) other methods required by the Executive Director.

(d) All applicants shall submit an application and proof of any relevant requirements on a form and in a manner prescribed by the Board.

(e) All applicants shall submit the applicable required fee(s).

(f) All applicants shall submit fingerprints for the retrieval of criminal history record information.

(g) A licensee is exempt from any penalty imposed by the Board for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the Board that the individual failed to renew the license in a timely manner because the individual was on active duty in the United States armed forces serving outside the state of Texas.

(h) A licensee who is a member of the state military forces or a reserve component of the armed forces of the United States and is ordered to active duty by proper authority is entitled to an additional amount of time, equal to the total number of years or parts of years that the person serves on active duty, to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the person's license.

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

Filed with the Office of the Secretary of State on August 29, 2013.

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Julie Hildebrand
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 475-0989

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22 TAC §101.8

The State Board of Dental Examiners (Board) proposes amendments to §101.8, concerning persons with criminal backgrounds.

This amendment will clarify the Board's authorized disciplinary action on an applicant, licensee or registrant because of a person's conviction of a crime and implement the requirements of House Bill 798 and House Bill 1659 (83rd Legislature, Regular Session).

Julie Hildebrand, Executive Director, has determined that for the first five-year period the amendment is in effect enforcing or administering the proposed rule will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Hildebrand has determined that for the first five-year period the proposed rule is in effect enforcing or administering the proposed rule will ensure the protection of public health and safety. Ms. Hildebrand has determined that for the first five-year period the proposed rule is in effect enforcing or administering the proposed rule will not have foreseeable economic costs to persons or small businesses who are required to comply with the amendment to the rule.

Ms. Hildebrand has determined that for the first five-year period the proposed rule is in effect enforcing or administering the proposed rule will have no foreseeable impact on employment in any regional area where the proposed rule is enforced or administered.

Comments on the proposed amendment may be submitted to Sarah Carnes-Lemp, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732; fax: (512) 463-7452; e-mail: sarah@tsbde.texas.gov no later than 30 days from the date that the proposed amendment is published in the *Texas Register.*

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

§101.8. Persons with Criminal Backgrounds.

(a) - (e) (No change.)

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

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

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

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

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

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

(g) (No change.)

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

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

(2) the [~~The~~] age of the person when the crime was committed;

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

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

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

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

(i) - (j) (No change.)

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

Filed with the Office of the Secretary of State on August 29, 2013.

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Julie Hildebrand
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0989

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CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners (Board) proposes amendments to §102.1, concerning the Board's fee schedule, to implement requirements of Senate Bill 1 and House Bill 3201 (83rd Legislature, Regular Session). The proposed amendments will show the increase in fees as required and developed through Senate Bill 1 and House Bill 3201.

Julie Hildebrand, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendments to the rule.

Ms. Hildebrand has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this rule will be to provide funding for the administrative functions of the Board. Ms. Hildebrand has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses who are required to comply with the rule is no more than the relevant fees listed in the rule. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendments may be submitted to Sarah Carnes-Lemp, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732; fax: (512) 463-7452; e-mail: sarah@tsbde.texas.gov no later than 30 days from the date that the proposed amendments are published in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state

laws relating to the practice of dentistry to protect the public health and safety.

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

§102.1. Fee Schedule.

The Board has established the following reasonable and necessary fees for the administration of its functions:
Figure: 22 TAC §102.1
[~~Figure: 22 TAC §102.1~~]

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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Julie Hildebrand
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0989

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CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.6

The State Board of Dental Examiners (Board) proposes amendments to §103.6, concerning the Board's authority to license individuals who are military personnel or spouses of military personnel, implementing requirements of Senate Bill 162 (83rd Legislature, Regular Session). The proposed amendments will implement the requirements of Senate Bill 162 which allows person with military background get licensed in a timely fashion.

Julie Hildebrand, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendments to the rule.

Ms. Hildebrand has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to help persons who are military personnel get licensed in a timely fashion. Ms. Hildebrand has determined that for the first five-year period the proposed rule is in effect, there are no foreseeable costs to persons or small businesses who are required to comply with the rule. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendments may be submitted to Sarah Carnes-Lemp, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732; fax: (512) 463-7452; e-mail: sarah@tsbde.texas.gov no later than 30 days from the date that the proposed amendments are is published in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

§103.6. Dental Hygienist Licensing for Military Service Members, Military Veterans, and Military Spouses [~~Licensing for Military Spouses~~].

The Board may issue a license to a dental hygienist applicant who is a Military service member, Military veteran, or Military spouse [~~the spouse of a person serving on active duty as a member of the armed forces of the United States~~] in compliance with §101.6 of this title (relating to Dental Licensing for Military Service Members, Military Veterans, and Military Spouses [~~Licensing for Military Spouses~~]).

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 August 29, 2013.

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Julie Hildebrand
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0989

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CHAPTER 107. DENTAL BOARD PROCEDURES
SUBCHAPTER A. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §107.2

The State Board of Dental Examiners (Board) proposes amendments to §107.2, concerning the Board's authority to take action on licensees who default on their child support payments and to implement requirements of House Bill 1846 (83rd Legislature, Regular Session). The proposed amendments will clarify the Board's authority to discipline as well as the licensee's due process rights.

Julie Hildebrand, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendments to the rule.

Ms. Hildebrand has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to help accomplish compliance with state law and provide clarity on the licensee's due process rights. Ms. Hildebrand has determined that for the first five-year period the proposed rule is in effect, there are no foreseeable costs to persons or small businesses who are required to comply with the rule. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendments may be submitted to Sarah Carnes-Lemp, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732; fax: (512) 463-7452; e-mail: sarah@tsbde.texas.gov no later than 30 days from the date that the proposed amendments are is published in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

§107.2. Effect of Child Support Payment Default on Licensure Status, Application, and Renewal.

(a) "License" means a license, certificate, registration, permit, or other authorization issued by the Board.

(b) Effect of Child Support Payment Default on Licensure Status.

(1) The licensure status of a licensee is subject to the course of action established by the Texas Family Code, §232.011.

(2) On receipt of a final order suspending a license issued by the Board to an individual, the Board shall immediately record the suspension of the licensee in the Board's records.

(3) The Board shall implement the terms of the final order suspending license without additional review or hearing. The Board may provide notice as appropriate to the license holder.

(4) The Board may not modify, remand, reverse, vacate, or stay an order suspending license and may not review, vacate, or reconsider the terms of a final order suspending license.

(5) An individual who is the subject of a final order suspending license is not entitled to a refund for any fee paid to the Board.

(6) An individual who continues to engage in the practice of dentistry or any licensed activity after the implementation of the order suspending license by the Board is liable for the same civil and criminal penalties provided for engaging in the licensed activity without a license or while a license is suspended that apply to any other license holder of the Board.

(7) The Board is exempt from liability to a license holder for any act authorized under Texas Family Code, Chapter 232 performed by the Board.

(8) Except as provided by Texas Family Code, Chapter 232, an order suspending license or dismissing a petition for the suspension of a license does not affect the power of the Board to grant, deny, suspend, revoke, terminate, or renew a license otherwise.

(9) An order issued under this chapter to suspend a license applies to each license issued by the licensing authority subject to the order for which the obligor is eligible. The licensing authority may not issue or renew any other license for the obligor until an order vacating or staying an order suspending license is rendered.

(c) Effect of Child Support Payment Default on Licensure Application and Renewal.

(1) Initial applications and applications for renewal of licenses issued by the board are subject to the course of action established by the Texas Family Code, §232.0135.

(2) Upon notice from another agency that an obligor has failed to pay child support for six months or more, the Board shall refuse to grant initial licensure or renewal of an existing license to an obligor until the Board is notified by the other agency that the obligor has:

(A) paid all child support arrearages;

(B) made an immediate payment of not less than $200 toward child support arrearages owed and established with the other agency a satisfactory repayment schedule for the remainder or is in compliance with a court order for payment of the arrearages;

(C) been granted an exemption from this subsection as part of a court-supervised plan to improve the obligor's earnings and child support payments; or

(D) successfully contested the denial before the child support agency in accordance with Texas Family Code, §232.0135(d).

(d) The Board may charge a fee to a licensee who is the subject of an order suspending license or of an action of another agency under Texas Family Code, §232.0135 to deny issuance or renewal of license in an amount sufficient to recover the administrative costs incurred by the Board.

~~[(b) Initial applications and applications for renewal of licenses issued by the board are subject to the course of action established by the Texas Family Code, §232.0135.]~~

~~[(c) Upon notice from a child support agency that an obligor has failed to pay child support for six months or more, the Board shall refuse to grant initial licensure or renewal of an existing license to an obligor until the Board is notified by the child support agency that the obligor has:]~~

~~[(1) paid all child support arrearages;]~~

~~[(2) established with the child support agency a satisfactory repayment schedule or is in compliance with a court order for payment of the arrearages;]~~

~~[(3) been granted an exemption from this subsection as part of a court-supervised plan to improve the obligor's earnings and child support payments; or]~~

~~[(4) successfully contested the denial before the child support agency in accordance with §232.0135(d), Texas Family Code.]~~

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 August 29, 2013.

TRD-201303665
Julie Hildebrand
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 475-0989

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22 TAC §107.3

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Dental Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The State Board of Dental Examiners (Board) proposes the repeal of §107.3, concerning the Board's authority to license individuals who default on their student loan payments and to implement requirements of §56.003 of the Texas Occupations Code. This proposed repeal is necessary in order to propose a new rule that incorporates requirements of §56.003 of the Texas Occupations Code.

Julie Hildebrand, Executive Director, has determined that for the first five-year period the proposed repeal is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the repeal of the rule.

Ms. Hildebrand has also determined that for the first five-year period the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal will be to help persons who are military personnel get licensed in a timely fashion. Ms. Hildebrand has determined that for the first five-year period the proposed repeal is in effect, there are no foreseeable costs to persons or small businesses who are required to comply with the repeal. There is no foreseeable impact on employment in any regional area where the repeal is enforced or administered.

Comments on the proposed repeal may be submitted to Sarah Carnes-Lemp, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732; fax: (512) 463-7452; e-mail: sarah@ts-bde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

The repeal is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

§107.3. Effect of Student Loan Payment Default on Licensure.

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 August 29, 2013.

TRD-201303670
Julie Hildebrand
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0989

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22 TAC §107.3

The State Board of Dental Examiners (Board) proposes new §107.3, concerning the Board's authority to take action on licensees who default on their student loan payments, in order to implement requirements of §56.003 of the Texas Occupations Code. This proposed new rule will clarify the Board's authority to discipline as well as the licensee's due process rights.

Julie Hildebrand, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the new rule.

Ms. Hildebrand has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this new rule will be to help accomplish compliance with state law and provide clarity on the licensee's due process rights. Ms. Hildebrand has determined that for the first five-year period the new rule is in effect, there are no foreseeable costs to persons or small businesses who are required to comply with the rule. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Sarah Carnes-Lemp, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732; fax: (512) 463-7452; e-mail: sarah@ts-bde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

The new rule is proposed under Texas Occupations Code, §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

§107.3. Effect of Student Loan Payment Default on Licensure.

(a) Definitions.

(1) Administering entity--A governmental entity that administers a student loan, student loan repayment, or scholarship program.

(2) Corporation--The Texas Guaranteed Student Loan Corporation (TGSLC).

(3) License--A license, certificate, registration, permit, or other authorization issued by the Board.

(4) Student loan--A loan made to a person to support the person while attending a public or private institution of higher education or other postsecondary educational establishment that is:

(A) owed to this state, an agency of this state, or the United States; or

(B) guaranteed by this state, an agency of this state, or the United States.

(b) Discretion to Renew, Approve or Discipline a License.

(1) The Board may deny a person's initial application for licensure; deny an application for renewal of license issued by the Board; suspend the license; or take other disciplinary action against the person upon receipt of information from an administering entity that a person has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform the person's service obligation under the contract as established by §56.003 of the Texas Occupations Code.

(2) A determination by an administering entity that a person has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform the person's service obligation under the contract creates a rebuttable presumption that the person has committed the default or breach.

(3) The Board may rescind any action taken under paragraph (1) of this subsection on the receipt of information from an administering entity that the person against whom the action was taken has:

(A) entered into an agreement with the administering entity to:

(i) repay the student loan;

(ii) perform the service obligation;

(iii) pay any damages required by the student loan repayment contract or scholarship contract; or

(B) taken other action resulting in the person no longer being in default on the student loan or in breach of the student loan repayment contract or scholarship contract.

(4) The Board may reinstate any action taken under paragraph (1) of this subsection and may take other disciplinary action on the receipt of information from an administering entity that the person against whom the action was taken has:

(A) defaulted on breached an agreement under paragraph (3)(A) of this subsection; or

(B) otherwise defaulted on the student loan or breached the student loan repayment or scholarship contract.

(c) Mandatory Nonrenewal of a License.

(1) The Board shall not renew a license due to a default on a student loan guaranteed by Texas Guaranteed Student Loan Corporation (TGSLC), a default on a repayment agreement with TGSLC or a failure to enter a repayment agreement with TGSLC as established under §57.491 of the Texas Education Code, unless the licensee presents to the Board a certificate issued by the corporation certifying that:

(A) the licensee has entered a repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation or on a repayment agreement.

(2) The Board shall provide its applicants and licensees with written notice of the nonrenewal policies established under §57.491 of the Texas Education Code and an opportunity for a hearing in accordance with the provisions of the Administrative Procedure Act, Texas Government Code, §§2001.001, et seq.

(3) As required by §57.491(c) of the Texas Education Code, the Board, on an annual basis, shall prepare a list of the agency's licensees and submit the list to the corporation in hard copy or electronic form.

This agency hereby certifies that the 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 August 29, 2013.

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Julie Hildebrand
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 475-0989

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CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.12

The State Board of Dental Examiners (Board) proposes new §108.12, concerning the dental treatment of sleep disorders.

This new rule will define the scope of practice of a dentist in the treatment of sleep disorders.

Julie Hildebrand, Executive Director, has determined that for the first five-year period the new rule is in effect enforcing or administering the rule will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Hildebrand has determined that for the first five-year period the new rule is in effect enforcing or administering the rule will ensure the protection of public health and safety. Ms. Hildebrand has determined that for the first five-year period the new rule is in effect enforcing or administering the rule will not have foreseeable economic costs to persons or small businesses who are required to comply with the rule.

Ms. Hildebrand has determined that for the first five-year period the new rule is in effect enforcing or administering the rule will have no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Sarah Carnes-Lemp, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732; fax: (512) 463-7452; e-mail: sarah@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

The new rule is proposed under Texas Occupations Code, §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

§108.12. Dental Treatment of Sleep Disorders.

(a) A dentist may diagnose, treat, operate, or prescribe for a disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums and jaws, and provide surgical and adjunctive treatment for directly related and adjacent masticatory structures.

(b) A dentist may diagnose and treat any dental comorbidity related to snoring or upper airway resistance syndrome (UARS). A dentist shall not diagnose a patient for obstructive sleep apnea (OSA) or independently treat an OSA patient without collaboration with a Texas licensed physician.

(c) A dentist may screen a dental patient for a sleep disorder by using subjective and objective screening tools. A dentist may order a sleep study, which must be interpreted by a Texas licensed physician.

(d) A dentist may fabricate an oral appliance for treatment of a dental comorbidity related to snoring or UARS without the need for collaboration with a Texas licensed physician. A dentist may fabricate an oral appliance for treatment of OSA only in collaboration with a Texas licensed physician. A dentist shall be responsible for monitoring and maintaining the oral appliance to ensure the patient's dental health, while the physician should be responsible for monitoring the patient's medical condition.

(e) A dentist treating a sleep disorder patient shall comply with the Dental Practice Act and Board rules, including but not limited to provisions related to fair dealing, standard of care, records, and business promotion.

(f) A dentist shall maintain records as required by the Dental Practice Act and Board rules including but not limited to records related to treatment planning, recommendations and options, informed consent, consultations and recommended referrals, and post treatment recommendations.

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 August 29, 2013.

TRD-201303663
Julie Hildebrand
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 475-0989

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22 TAC §108.13

The State Board of Dental Examiners (Board) proposes new §108.13, concerning the practice of dentistry on certain children.

This new rule will implement the requirements of House Bill 3201 (83rd Legislation, Regular Session). This proposed new rule allows mandates that dental licensees allow parents to be present during dental treatment of their child unless the dentist feels the presence will have an adverse effect on the treatment.

Julie Hildebrand, Executive Director, has determined that for the first five-year period the new rule is in effect enforcing or administering the rule will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Hildebrand has determined that for the first five-year period the new rule is in effect enforcing or administering the rule will ensure the protection of public health and safety. Ms. Hildebrand has determined that for the first five-year period the new rule is in effect enforcing or administering the rule will not have foreseeable economic costs to persons or small businesses who are required to comply with the rule.

Ms. Hildebrand has determined that for the first five-year period the new rule is in effect enforcing or administering the rule will have no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Sarah Carnes-Lemp, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732; fax: (512) 463-7452; email: sarah@ts-bde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

§108.13. Practice of Dentistry on Certain Children.

(a) The parent or guardian of a child younger than 18 years of age may be present in the treatment room during the child's dental treatment or procedure, unless the dentist determines in the dentist's professional judgment that the presence of the parent or guardian in the treatment room is likely to have an adverse effect on the treatment of the child.

(b) In this section, "parent or guardian" includes a person authorized by law to consent for the medical or dental treatment of a child younger than 18 years of age.

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

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TRD-201303672
Julie Hildebrand
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 475-0989

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CHAPTER 110. SEDATION AND ANESTHESIA

22 TAC §110.6

The State Board of Dental Examiners (Board) proposes amendments to §110.6, concerning deep sedation and general anesthesia requirements. The proposed amendments will clarify the Board's requirements of who is a qualified individual as described in §110.6.

Julie Hildebrand, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendments to the rule.

Ms. Hildebrand has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering the rule will be to protect the public health and safety. Ms. Hildebrand has determined that for the first five-year period the proposed rule is in effect, there are no foreseeable costs to persons or small businesses who are required to comply with the rule. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed rule may be submitted to Sarah Carnes-Lemp, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732; fax: (512) 463-7452; e-mail: sarah@ts-bde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

§110.6. Deep Sedation or General Anesthesia.

(a) - (b) (No change.)

(c) Clinical Requirements

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

(3) Personnel and Equipment Requirements.

(A) Personnel.

(i) A minimum of three (3) individuals must be present during the procedure:

(I) a dentist qualified to administer the deep sedation or general anesthesia who is currently certified in ACLS and/or PALS; and

(II) two additional individuals who have current certification of successfully completing a course in Basic Life Support (BLS) for Healthcare Providers.

(ii) When the same individual responsible for administering the deep sedation or general anesthesia is performing the dental procedure, the dentist must delegate patient monitoring to either a dentist holding a valid Level 4 - Deep Sedation or General Anesthesia permit, a physician anesthesiologist, a certified nurse anesthetist, or a certified dental anesthesia assistant [~~a qualified individual~~].

(B) (No change.)

(4) - (8) (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 August 29, 2013.

TRD-201303673
Julie Hildebrand
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 475-0989

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CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.2

The State Board of Dental Examiners (Board) proposes amendments to §114.2, concerning the Board's authority to license individuals who are military personnel or spouses of military personnel, implementing requirements of Senate Bill 162 (83rd Legislature, Regular Session). The proposed amendments will implement the requirements of Senate Bill 162 which allows person with military background get licensed in a timely fashion.

Julie Hildebrand, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendments to the rule.

Ms. Hildebrand has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to help persons who are military personnel get licensed in a timely fashion. Ms. Hildebrand has determined that for the first five-year period the proposed rule is in effect, there are no foreseeable costs to persons or small businesses who are required to comply with the rule. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendments may be submitted to Sarah Carnes-Lemp, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732; fax (512) 463-7452; e-mail: sarah@tsbde.texas.gov no later than 30 days from the date that the proposed amendments are published in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

§114.2. Registration of Dental Assistants.

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

(l) The Board may issue a registration to a dental assistant applicant who is a Military service member, Military veteran, or Military spouse in compliance with §101.6 of this title (relating to Dental Licensing for Military Service Members, Military Veterans, and Military Spouses).

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 August 29, 2013.

TRD-201303667
Julie Hildebrand
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 475-0989

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 193. STANDING DELEGATION ORDERS

The Texas Medical Board (Board) proposes the repeal of §§193.1 - 193.10 and §193.12 and new §§193.1 - 193.20, concerning Standing Delegation Orders.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEAL

The current sections are proposed for repeal because new §§193.1 - 193.20 are proposed in this issue of the *Texas Register.* The Board has determined that due to the extensive reorganization of Chapter 193, repeal of the entire chapter and replacement with new sections is more efficient than proposing multiple amendments to make the required changes. The new sections of Chapter 193 are proposed to conform Chapter 193 with changes made to the Texas Occupation Code Annotated Chapter 157, Subchapter B, concerning delegation to advanced practice registered nurses and physician assistants, by Senate Bill 406, 83rd Legislature, Regular Session (2013). The Board is mandated under the terms of Senate Bill 406 to adopt rules implementing the changes in the Occupations Code Chapter 157.

SECTION-BY-SECTION SUMMARY

New §193.1, concerning Purpose, describes the intended purpose of Chapter 193 and sets forth its statutory basis.

New §193.2, concerning Definitions, provides definitions for important terms and phrases used in Chapter 193. New terms and phrases defined include: prescriptive authority agreement, device, facility-based practice site, health professional shortage areas (HSPA), hospital, medication order, nonprescription drug,

physician group practice, practice serving a medically underserved area, prescribe or order a drug or device, and prescription drug.

New §193.3, concerning Exclusion from the Provisions of this Chapter, sets forth certain limited exclusions to the operation of the Chapter 193.

New §193.4, concerning Scope of Standing Delegation Orders, describes the scope of standing delegation orders and incorporates new terms and definitions consistent with the changes to Chapter 157 of the Occupations Code.

New §193.5, concerning Physician Liability for Delegated Acts and Enforcement, sets forth the applicable limitation on the liability of physicians based solely on signing a prescriptive authority agreement or delegation order. This section further states that delegating physicians remain responsible to the Board and their patients for acts performed under the physician's delegated authority.

New §193.6, concerning Delegation of Prescribing and Ordering Drugs and Devices, sets forth the general requirements and limitations related to the delegation and prescribing and ordering of drugs or devices. This section prohibits the delegation of the prescriptive authority for Schedule II drugs, except in facility-based practices under §157.054 of the Occupations Code. Prescribing under prescriptive authority agreements eliminates former requirements for site-based supervision.

New §193.7, concerning Prescriptive Authority Agreements Generally, provides that physicians may delegate to advanced practice registered nurses and physician assistants the act of prescribing or ordering a drug or device through a prescriptive authority agreement and limits the combined number of advanced practice registered nurses and physician assistants with whom a physician may enter into a prescriptive authority agreement to seven. The section sets forth an exclusion to the limit of seven prescriptive authority agreements for prescriptive authority agreements being exercised in facility-based practices in hospitals, subject to the limitations set out in §193.9(c)(5), and in practices serving medically underserved populations. Prescribing under prescriptive authority agreements pursuant to this section eliminates former requirements for site-based supervision.

New §193.8, concerning Prescriptive Authority Agreements: Minimum Requirements, sets forth minimum requirements for valid prescriptive authority agreements, including requirements for periodic face-to-face meeting with the supervising physicians to discuss patient care and improvement of patient care.

New §193.9, concerning Delegation of Prescriptive Authority at Facility-Based Practice Sites, describes the requirements for delegating the prescribing or ordering of a drug or device at a facility-based practice site. This section states that the limitations on the number of advanced practice registered nurses and physician assistants delegated to under prescriptive authority agreements do not apply to a physician whose practice is facility-based under Chapter 193, subject to limitations related to long-term care facilities and the number of facility-based practices and long term care facilities at which a physician may delegate. This section also addresses requirements for physician supervision and states that the constant physical presence of a physician is not required.

New §193.10, concerning Registration of Delegation and Prescriptive Authority Agreements, describes the requirements for physicians to register information with the Board regarding prescriptive authority agreements entered into with advance practice registered nurses and physician assistants. This section also states that the Board shall maintain and exchange information with the Texas Board of Nursing and Physician Assistant Board as well as creating and making available to the public an online list of physicians, advanced practice registered nurses, and physician assistants who have entered into prescriptive authority agreements.

New §193.11, concerning Prescription Forms, provides that prescription forms shall comply with applicable rules adopted by the Board of Pharmacy.

New §193.12, concerning Prescriptive Authority Agreements, provides the Board authority to enter, with reasonable notice, a site where a party to a prescriptive authority agreement is practicing, to inspect and audit records or activities related to the implantation and operation of the agreement.

New §193.13, concerning Delegation to Certified Registered Nurse Anesthetists, authorizes the delegation of the ordering of drugs and devices to a certified nurse anesthetist in a licensed hospital or ambulatory surgical center, for the purpose of the nurse anesthetist administering an anesthetic or anesthesia-related service ordered by a physician.

New §193.14, concerning Delegation Related to Obstetrical Services, describes the authority, requirements, and limitations, related to delegating to physicians assistants offering obstetrical services and advance practice registered nurses recognized by the Texas Board of Nursing as nurse midwifes, the act or acts of administering controlled substances related to intra-partum and post-partum care.

New §193.15, concerning Delegated Drug Therapy Management, describes the authorization for, and requirements, and limitations related to the delegation by physicians to pharmacists of drug therapy management.

New §193.16, concerning Delegated Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol, describes the authorization for, requirements, and limitations related to the delegation of the administration of immunizations and vaccinations to a pharmacist.

New §193.17, concerning Nonsurgical Medical Cosmetic Procedures, describes the duties and responsibilities of a physician who performs or who delegates the performance of a nonsurgical medical cosmetic procedure.

New §193.18, concerning Pronouncement of Death, authorizes physicians to receive information from Texas licensed vocational nurses through electronic communication for the purposes of making a pronouncement of death.

New §193.19, concerning Collaborative Management of Glaucoma, sets forth the minimum standards for the collaborative treatment of glaucoma.

New §193.20, concerning Immunization of Persons Over 65 by Physicians' Offices, sets forth requirements that physicians providing ongoing primary or principal care to persons over 65 (elderly persons) offer, to the extent possible, pneumococcal and influenza vaccines to each elderly person receiving care at the office.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Scott Freshour, General Counsel for the Board, has determined that for the first five years the repeals and new sections are in effect, enforcing or administering the new sections and repeals will not have foreseeable implications relating to costs or revenues of state or local governments

PUBLIC BENEFITS AND COSTS

Mr. Freshour also has determined that, for each of the first five years the repeals and new sections are in effect, the public benefit expected as a result of enforcing the new sections and repeals will be consistency with the new, amended provisions of the Occupations Code dealing with delegation to advanced practice registered nurses and physician assistants, particularly the delegation of prescriptive authority. An additional public benefit will be an increase in services provided to Texas citizens by physicians' mid-level providers, due to the elimination of site specific supervision requirements, as well as improved and efficient oversight of physician delegation by the Board. Additionally, the public will be benefited by clear standards governing the performance or delegation by a physician of nonsurgical medical cosmetic procedures.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Freshour also has determined that a local employment impact statement is not required because the proposed new sections and repeals do not adversely affect a local economy in a material way for the first five years that the news sections and repeals will be in effect and will impose no new requirements on local economies.

Mr. Freshour has also determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of the new sections and repeals. Mr. Freshour has further determined that there is no anticipated economic cost to persons who are otherwise required to comply with the new rules and repeals. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY IMPACT ANALYSIS

Mr. Freshour also has determined that the proposed repeals and new sections are not subject to Texas Government Code §2001.0225 because they are not major environmental rules under that section.

TAKINGS IMPACT ASSESSMENT

Mr. Freshour also has determined that the promulgation and enforcement of the proposed repeals and new sections will constitute neither a statutory nor a constitutional taking of private real property. The proposed repeals and new sections do not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the repeals and new sections do not impose a burden or restrict or limit the owner's right to property. Therefore, the proposed repeals and new sections do not constitute a taking under Texas Government Code Chapter 2007.

SUBMITTAL OF COMMENTS

Comments on the content of this proposal will be accepted for 30 days following publication and may be submitted to Robert Blech, P.O. Box 2018, Austin, Texas 78768-2018 or emailed to robert.blech@oag.state.tx.us.

22 TAC §§193.1 - 193.10, 193.12

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

STATUTORY AUTHORITY

The repeals are proposed under the authority of 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 repeals effect Texas Occupations Code Annotated, §§157.051 - 157.060.

§193.1. Purpose.

§193.2. Definitions.

§193.3. Exclusion from the Provisions of this Chapter.

§193.4. Scope of Standing Delegation Orders.

§193.5. Enforcement.

§193.6. Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses.

§193.7. Delegated Drug Therapy Management.

§193.8. Delegated Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol.

§193.9. Pronouncement of Death.

§193.10. Collaborative Management of Glaucoma.

§193.12. Immunization of Persons Over 65 by Physician's Offices.

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 August 30, 2013.

TRD-201303692
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 305-7016

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22 TAC §§193.1 - 193.20

STATUTORY AUTHORITY

The new sections are proposed under the authority of 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 new sections effect Texas Occupations Code Annotated, §§157.051 - 157.060.

§193.1. Purpose.

(a) The purpose of this chapter is to encourage the more effective utilization of the skills of physicians by establishing guidelines for the delegation of health care tasks to qualified non-physicians providing services under reasonable physician control and supervision where

such delegation is consistent with the patient's health and welfare; and to provide guidelines for physicians in order that existing legal constraints should not be an unnecessary hindrance to the more effective provision of health care services. Texas Occupations Code Annotated, §§164.001, 164.052, and 164.053 empower the Texas Medical Board to cancel, revoke or suspend the license of any practitioner of medicine upon proof that such practitioner is guilty of failing to supervise adequately the activities of persons acting under the physician's supervision, allowing another person to use his license for the purpose of practicing medicine, or of aiding or abetting, directly or indirectly, the practice of medicine by a person or entity not licensed to do so by the board. The board recognizes that the delivery of quality health care requires expertise and assistance of many dedicated individuals in the allied health profession. The provisions of this chapter are not intended to, and shall not be construed to, restrict the physician from delegating administrative and technical or clinical tasks not involving the exercise of medical judgment, to those specially trained individuals instructed and directed by a licensed physician who accepts responsibility for the acts of such allied health personnel. The board recognizes that statutory law shall prevail over any rules adopted and that the practice of medicine is, under Texas Occupations Code Annotated, §151.002(13), defined as follows: A person shall be considered to be practicing medicine within the Medical Practice Act:

(1) who shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof; or

(2) who shall diagnose, treat, or offer to treat any disease or disorder, mental or physical or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation.

(b) Likewise, nothing in this chapter shall be construed as to prohibit a physician from instructing a technician, assistant, or nurse to perform delegated tasks so long as the physician retains supervision and control of the technician, assistant, or employee. Nothing in this chapter should be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of those persons with whom the delegating physician has established a physician-patient relationship. Nothing in this chapter shall enlarge or extend the applicable statutory law relating to the practice of medicine, or other rules and regulations previously promulgated by the board.

§193.2. Definitions.

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

(1) Advanced practice registered nurse--A registered nurse approved by the Texas Board of Nursing to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes an advanced nurse practitioner, a nurse midwife, nurse anesthetist, clinical nurse specialist, and advanced practice nurse, as defined by Texas Occupations Code Annotated, §301.152.

(2) Authorizing physician--A physician or physicians licensed by the board who execute a standing delegation order or prescriptive authority agreement.

(3) Controlled substance--A substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Groups 1, 1-A, or 2 through 4 as described under the Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act). The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance.

(4) Dangerous drug--A device or a drug that is unsafe for self medication and that is not included in Schedules I through V or Penalty Groups 1 through 4 of the Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend: "Caution: federal law prohibits dispensing without prescription".

(5) Device--Means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner, as defined by §551.003 of the Occupations Code.

(6) Facility based practice site--A hospital, as defined by §157.051(6) of the Act and this chapter, or a licensed long term care facility. A facility based practice does not include a freestanding clinic, center or other medical practice associated with or owned or operated by, a hospital or licensed long-term care facility.

(7) Health professional shortage area (HPSA)--

(A) an urban or rural area of this state that:

(i) is not required to conform to the geographic boundaries of a political subdivision but is a rational area for the delivery of health services;

(ii) the secretary of health and human services determines has a health professional shortage; and

(iii) is not reasonably accessible to an adequately served area;

(B) a population group that the secretary of health and human services determines has a health professional shortage; or

(C) a public or nonprofit private medical facility or other facility that the secretary of health and human services determines has a health professional shortage, as described by 42 U.S.C. §254e(a)(1).

(8) Hospital--A facility that:

(A) is:

(i) a general hospital or a special hospital, as those terms are defined by §241.003, Health and Safety Code, including a hospital maintained or operated by the state; or

(ii) a mental hospital licensed under Chapter 577, Health and Safety Code; and

(B) has an organized medical staff.

(9) Medication order--An order from a practitioner or a practitioner's designated agent for administration of a drug or device, as defined by §551.003 of the Occupations Code, or an order from a practitioner to dispense a drug to a patient in a hospital for immediate administration while the patient is in the hospital or for emergency use on the patient's release from the hospital, as defined by Texas Health and Safety Code, §481.002.

(10) Nonprescription drug--A nonnarcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with state and federal law, as defined by §551.003(25) of the Occupations Code.

(11) Physician Assistant--A person who is licensed as a physician assistant by the Texas Physician Assistant Board.

(12) Physician group practice--An entity through which two or more physicians deliver health care to the public through the practice of medicine on a regular basis and that is:

(A) owned and operated by two or more physicians; or

(B) a freestanding clinic, center, or office of a nonprofit health organization certified by the board under §162.1(b) of this title (relating to Supervision of Medical Students) that complies with the requirements of Chapter 162 of this title.

(13) Physician's orders--The instructions of a physician for the care of an individual patient.

(14) Practice serving a medically underserved population--Refers to the following:

(A) a practice in a health professional shortage area;

(B) a clinic designated as a rural health clinic under 42 U.S.C. §1395x(aa);

(C) a public health clinic or a family planning clinic under contract with the Health and Human Services Commission or the Department of State Health Services;

(D) a clinic designated as a federally qualified health center under 42 U.S.C. §1396d(l)(2)(B);

(E) a county, state, or federal correctional facility;

(F) a practice:

(i) that either:

(I) is located in an area in which the Department of State Health Services determines there is an insufficient number of physicians providing services to eligible clients of federally, state, or locally funded health care programs; or

(II) is a practice that the Department of State Health Services determines serves a disproportionate number of clients eligible to participate in federally, state, or locally funded health care programs; and

(ii) for which the Department of State Health Services publishes notice of the department's determination in the *Texas Register* and provides an opportunity for public comment in the manner provided for a proposed rule under Chapter 2001, Government Code; or

(G) a practice at which a physician was delegating prescriptive authority to an advanced practice registered nurse or physician assistant on or before March 1, 2013, based on the practice qualifying as a site serving a medically underserved population.

(15) Prescribe or order a drug or device--Prescribing or ordering a drug or device, including the issuing of a prescription drug order or medication order.

(16) Prescription drug--Means:

(A) a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) a drug or device that under federal law is required, before being dispensed or delivered, to be labeled with the statement:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a practitioner only.

(17) Prescriptive authority agreement--An agreement entered into by a physician and an advanced practice registered nurse or physician assistant through which the physician delegates to the advanced practice registered nurse or physician assistant the act of prescribing or ordering a drug or device. Prescriptive authority agreements are required for the delegation of the act of prescribing or ordering a drug or device in all practice settings, with the exception of a facility-based practice, pursuant to §157.054 of the Medical Practice Act ("the Act"), Texas Occupations Code Annotated, §§157.051 - 157.060 and this title.

(18) Protocols--Written authorization delegating authority to initiate medical aspects of patient care, including delegation of the act of prescribing or ordering a drug or device at a facility-based practice. The term protocols is separate and distinct from prescriptive authority agreements as defined under the Act and this chapter. However, prescriptive authority agreements may reference or include the terms of a protocol(s). The protocols must be agreed upon and signed by the physician, the physician assistant and/or advanced practice registered nurse, reviewed and signed at least annually, maintained on site, and must contain a list of the types or categories of dangerous drugs and controlled substances available for prescription, limitations on the number of dosage units and refills permitted, and instructions to be given the patient for follow-up monitoring or contain a list of the types or categories of dangerous drugs and controlled substances that may not be prescribed. Protocols shall be defined to promote the exercise of professional judgment by the advanced practice registered nurse and physician assistant commensurate with their education and experience. The protocols used by a reasonable and prudent physician exercising sound medical judgment need not describe the exact steps that an advanced practice registered nurse or a physician assistant must take with respect to each specific condition, disease, or symptom.

(19) Standing delegation order--Written instructions, orders, rules, regulations, or procedures prepared by a physician and designed for a patient population with specific diseases, disorders, health problems, or sets of symptoms. Such written instructions, orders, rules, regulations or procedures shall delineate under what set of conditions and circumstances action should be instituted. These instructions, orders, rules, regulations or procedures are to provide authority for and a plan for use with patients presenting themselves prior to being examined or evaluated by a physician to assure that such acts are carried out correctly and are distinct from specific orders written for a particular patient, and shall be limited in scope of authority to be delegated as provided in §193.4 of this title (relating to Scope of Standing Delegation Orders). As used in this chapter, standing delegation orders do not refer to treatment programs ordered by a physician following examination or evaluation by a physician, nor to established procedures for providing of care by personnel under direct, personal supervision of a physician who is directly supervising or overseeing the delivery of medical or health care. As used in this chapter, standing delegation orders are separate and distinct from prescriptive authority agreements as defined in this chapter. Such standing delegation orders should be developed and approved by the physician who is responsible for the delivery of medical care covered by the orders. Such standing delegation orders, at a minimum, should:

(A) include a written description of the method used in developing and approving them and any revision thereof;

(B) be in writing, dated, and signed by the physician;

(C) specify which acts require a particular level of training or licensure and under what circumstances they are to be performed;

(D) state specific requirements which are to be followed by persons acting under same in performing particular functions;

(E) specify any experience, training, and/or education requirements for those persons who shall perform such orders;

(F) establish a method for initial and continuing evaluation of the competence of those authorized to perform same;

(G) provide for a method of maintaining a written record of those persons authorized to perform same;

(H) specify the scope of supervision required for performance of same, for example, immediate supervision of a physician;

(I) set forth any specialized circumstances under which a person performing same is to immediately communicate with the patient's physician concerning the patient's condition;

(J) state limitations on setting, if any, in which the plan is to be performed;

(K) specify patient record-keeping requirements which shall, at a minimum, provide for accurate and detailed information regarding each patient visit; personnel involved in treatment and evaluation on each visit; drugs, or medications administered, prescribed or provided; and such other information which is routinely noted on patient charts and files by physicians in their offices; and

(L) provide for a method of periodic review, which shall be at least annually, of such plan including the effective date of initiation and the date of termination of the plan after which date the physician shall issue a new plan.

(20) Standing medical orders--Orders, rules, regulations or procedures prepared by a physician or approved by a physician or the medical staff of an institution for patients which have been examined or evaluated by a physician and which are used as a guide in preparation for and carrying out medical or surgical procedures or both. These orders, rules, regulations or procedures are authority and direction for the performance for certain prescribed acts for patients by authorized persons as distinguished from specific orders written for a particular patient or delegation pursuant to a prescriptive authority agreement.

(21) Submit--The term used to indicate that a completed item has been actually received and date-stamped by the Board along with all required documentation and fees, if any.

§193.3. Exclusion from the Provisions of this Chapter.

The provisions of this chapter shall not restrict physicians from authorizing the provision of patient care by use of pre-established programs under the following circumstances listed in paragraphs (1) - (6) of this section:

(1) where a patient is institutionalized and the care is to be delivered in a hospital, nursing home, or other institution which has an organized medical staff which has authorized or approved standing delegation orders or standing medical orders;

(2) where care is rendered in an emergency. Emergency care is that care provided to a person who is unconscious, ill, or injured, when the reasonable apparent circumstances require prompt decisions and actions in care and when the necessity of immediate care is so reasonably apparent that any delay in the rendering of care or treatment would seriously worsen the physical condition or endanger the life of the person;

(3) where care is rendered as a part of disaster relief and charges for the services are not made;

(4) where limitation from civil liability is provided under the Texas Civil Practice and Remedies Code, §74.151;

(5) where first aid care is provided at the site of an injury or as an interim measure prior to transfer of the patient to a medical facility where medical services are available;

(6) where care rendered is provided by licensed health professional acting within the scope of the licensed profession as defined by Texas Occupations Code Annotated.

§193.4. Scope of Standing Delegation Orders.

Providing the authorizing physician is satisfied as to the ability and competence of those for whom the physician is assuming responsibility, and with due regard for the safety of the patient and in keeping with sound medical practice, standing delegation orders may be authorized for the performance of acts and duties which do not require the exercise of independent medical judgment. Limitations on the physician's use of standing delegation orders which are stated in this section shall not apply to patient care delivered by physician assistants or advanced practice registered nurses, as authorized by §§157.051 - 157.060 of the Act, or §§193.6 - 193.14 of this title (relating to Delegation of Prescribing and Ordering Drugs and Devices; Prescriptive Authority Agreements Generally; Prescriptive Authority Agreements: Minimum Requirements; Delegation of Prescriptive Authority at a Facility-Based Practice Site; Registration of Delegation and Prescriptive Authority Agreements; Prescription Forms; Prescriptive Authority Agreement Inspections; Delegation to Certified Registered Nurse Anesthetists; and Delegation Related to Obstetrical Services). When care is delivered under other circumstances, standing delegation orders may include authority to undertake the following as listed in paragraphs (1) - (8) of this section:

(1) the taking of personal and medical history;

(2) the performance of appropriate physical examination and the recording of physical findings;

(3) the ordering of tests appropriate to the services provided under such orders, such as tuberculin tests, skin tests, VD tests, VDRL tests, gram stains, pap smears, and serological tests;

(4) the administration or providing of drugs ordered by direct personal or voice communication by the authorizing physician who shall assume responsibility for the patient's welfare, providing such administration or provision of drugs shall be in compliance with other state or federal laws and providing further that pre-signed prescriptions shall be utilized by the authorizing physician only under the following conditions shown in subparagraphs (A) - (D) of this paragraph.

(A) The prescription shall be prepared in full compliance with the Texas Health and Safety Code, §483.001(13) except for the inclusion of the name of the patient and the date of issuance.

(B) The prescription shall be for one of the following classes or types of drugs:

(i) oral contraceptives;

(ii) diaphragms and contraceptive creams and jellies;

(iii) topical anti-infectives for vaginal use;

(iv) oral anti-parasitic drugs for treatment of pinworms;

(v) topical anti-parasitic drugs; or

(vi) antibiotic drugs for treatment of venereal disease.

(C) The prescriptions may not be issued for any controlled substance.

(D) The providing of the drugs shall be in compliance with the Texas Pharmacy Act and rules adopted by the Texas State Board of Pharmacy.

(5) the administration of immunization vaccines providing the recipient is free of any condition for which the immunization is contraindicated;

(6) the providing of information regarding hygiene and the administration or providing of medications for health problems resulting from a lack of hygiene, including the institution of treatment for conditions such as scabies, ringworm, pinworm, head lice, diaper rash and other minor skin disorders, provided the administration or providing of drugs adheres to paragraph (4) of this section;

(7) the provision of services and the administration of therapy by public health departments as officially prescribed by the Department of State Health Services for the prevention or treatment of specific communicable diseases or health conditions for which the Department of State Health Services is responsible for control under state law;

(8) the issuance of a nonprescription drug for the symptomatic relief of minor illnesses provided that such medications are packaged and labeled in compliance with state and federal laws and regulations.

§193.5. Physician Liability for Delegated Acts and Enforcement.

(a) A physician shall not be liable for the act or acts of a physician assistant or advanced practice registered nurse solely on the basis of having signed an order, a standing medical order, a standing delegation order, a prescriptive authority agreement, or other order or protocol, authorizing a physician assistant or advanced practice registered nurse to administer, provide, prescribe or order a drug or device, unless the physician has reason to believe the physician assistant or advanced practice registered nurse lacked the competency to perform the act or acts.

(b) Notwithstanding subsection (a) of this section, delegating physicians remain responsible to the Board and to their patients for acts performed under the physician's delegated authority.

(c) Any physician authorizing standing delegation orders or standing medical orders which authorize the exercise of independent medical judgment or treatment shall be subject to having his or her license to practice medicine in the State of Texas revoked or suspended under §§164.001, 164.052, and 164.053 of the Act.

§193.6. Delegation of Prescribing and Ordering Drugs and Devices.

(a) Pursuant to §157.0511 of the Act, a physician's authority to delegate the prescribing or ordering of a drug or device is limited to:

(1) nonprescription drugs;

(2) dangerous drugs; and

(3) controlled substances to the extent provided in subsections (b) and (c) of this section.

(b) A physician may delegate the prescribing or ordering of a controlled substance only if:

(1) the prescription is for a controlled substance listed in Schedule III, IV, or V as established by the commissioner of the Department of State Health Services under Chapter 481 of the Texas Health and Safety Code;

(2) the prescription, including a refill of the prescription, is for a period not to exceed 90 days;

(3) with regard to the refill of a prescription, the refill is authorized after consultation with the delegating physician and the consultation is noted in the patient's chart; and

(4) with regard to a prescription for a child less than two years of age, the prescription is made after consultation with the delegating physician and the consultation is noted in the patient's chart.

(c) A physician may delegate the prescribing or ordering of a controlled substance listed in Schedule II as established by the commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code, only:

(1) in a hospital facility-based practice under §157.054 of the Act, in accordance with policies approved by the hospital's medical staff or a committee of the hospital's medical staff as provided by the hospital bylaws to ensure patient safety, and as part of the care provided to a patient who:

(A) has been admitted to the hospital for an intended length of stay of 24 hours or greater; or

(B) is receiving services in the emergency department of the hospital; or

(2) as part of the plan of care for the treatment of person who has executed a written certification of a terminal illness, has elected to receive hospice care, and is receiving hospice treatment from a qualified hospice provider.

§193.7. Prescriptive Authority Agreements Generally.

(a) A physician may delegate to an advanced practice registered nurse or physician assistant, acting under adequate physician supervision, the act of prescribing or ordering a drug or device as authorized through a prescriptive authority agreement between the physician and the advanced practice registered nurse or physician assistant, as applicable.

(b) A physician and an advanced practice registered nurse or physician assistant are eligible to enter into or be parties to a prescriptive authority agreement only if:

(1) if applicable, the Texas Board of Nursing has approved the advanced practice registered nurse's authority to prescribe or order a drug or device as authorized under this chapter;

(2) the advanced practice registered nurse or physician assistant:

(A) holds an active license to practice in this state as an advanced practice registered nurse or physician assistant, as applicable, and is in good standing in this state; and

(B) is not currently prohibited by the Texas Board of Nursing or the Texas Physician Assistant Board, as applicable, from executing a prescriptive authority agreement.

(c) Before executing the prescriptive authority agreement, the physician and the advanced practice registered nurse or physician assistant disclose to the other prospective party to the agreement any prior disciplinary action by the board, the Texas Board of Nursing, or the Texas Physician Assistant Board, as applicable.

(d) Except as provided by subsection (e) of this section, the combined number of advanced practice registered nurses and physician assistants with whom a physician may enter into a prescriptive authority agreement may not exceed seven advanced practice registered nurses and physician assistants or the full-time equivalent of seven advanced practice registered nurses and physician assistants.

(e) Subsection (d) of this section does not apply to a prescriptive authority agreement if the prescriptive authority is being exercised in:

(1) a practice serving a medically underserved population; or

(2) a facility-based practice in a hospital under §157.054, subject to the limitations in §157.054(b-1) of the Act and §193.9(c)(5) of this title (relating to Delegation of Prescriptive Authority at a Facility-Based Practice Site).

§193.8. Prescriptive Authority Agreements: Minimum Requirements. Prescriptive authority agreement must, at a minimum:

(1) be in writing and signed and dated by the parties to the agreement;

(2) state the name, address, and all professional license numbers of the parties to the agreement;

(3) state the nature of the practice, practice locations, or practice settings;

(4) identify the types or categories of drugs or devices that may be prescribed or the types or categories of drugs or devices that may not be prescribed;

(5) provide a general plan for addressing consultation and referral;

(6) provide a plan for addressing patient emergencies;

(7) state the general process for communication and the sharing of information between the physician and the advanced practice registered nurse or physician assistant to whom the physician has delegated prescriptive authority related to the care and treatment of patients;

(8) if alternate physician supervision is to be utilized, designate one or more alternate physicians who may:

(A) provide appropriate supervision on a temporary basis in accordance with the requirements established by the prescriptive authority agreement and the requirements of this subchapter; and

(B) participate in the prescriptive authority quality assurance and improvement plan meetings required under this section; and

(9) describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that includes the following:

(A) chart review, with the number of charts to be reviewed determined by the physician and advanced practice registered nurse or physician assistant; and

(B) periodic face-to-face meetings between the advanced practice registered nurse or physician assistant and the physician at a location determined by the physician and the advanced practice registered nurse or physician assistant.

(10) The periodic face-to-face meetings described by paragraph (9)(B) of this section must:

(A) include:

(i) the sharing of information relating to patient treatment and care, needed changes in patient care plans, and issues relating to referrals; and

(ii) discussion of patient care improvement; and

(B) be documented and occur, except as provided by subparagraph (C) of this paragraph:

(i) at least monthly until the third anniversary of the date the agreement is executed; and

(ii) at least quarterly after the third anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet; or

(C) if during the seven years preceding the date the agreement is executed, the advanced practice registered nurse or physician assistant was supervised for at least five years in a practice that included the exercise of prescriptive authority with required physician supervision by the physician with whom the prescriptive authority agreement is entered:

(i) at least monthly until the first anniversary of the date the agreement is executed; and

(ii) at least quarterly after the first anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet.

(11) The prescriptive authority agreement may include other provisions agreed to by the physician and advanced practice registered nurse or physician assistant.

(12) If the parties to the prescriptive authority agreement practice in a physician group practice, the physician may appoint one or more alternate supervising physicians designated under paragraph (8) of this section, if any, to conduct and document the quality assurance meetings in accordance with the requirements of this chapter.

(13) The prescriptive authority agreement need not describe the exact steps that an advanced practice registered nurse or physician assistant must take with respect to each specific condition, disease, or symptom.

(14) A physician, advanced practice registered nurse, or physician assistant who is a party to a prescriptive authority agreement must retain a copy of the agreement until the second anniversary of the date the agreement is terminated.

(15) A party to a prescriptive authority agreement may not by contract waive, void, or nullify any provision of this section or §157.0513 of the Occupations Code.

(16) In the event that a party to a prescriptive authority agreement is notified that the individual has become the subject of an investigation by the board, the Texas Board of Nursing, or the Texas Physician Assistant Board, the individual shall immediately notify the other party to the prescriptive authority agreement.

(17) The prescriptive authority agreement and any amendments must be reviewed at least annually, dated, and signed by the parties to the agreement. The prescriptive authority agreement and any amendments must be made available to the board, the Texas Board of Nursing, or the Texas Physician Assistant Board not later than the third business day after the date of receipt of request, if any.

(18) The prescriptive authority agreement should promote the exercise of professional judgment by the advanced practice registered nurse or physician assistant commensurate with the advanced practice registered nurse's or physician assistant's education and experience and the relationship between the advanced practice registered nurse or physician assistant and the physician.

(19) This section shall be liberally construed to allow the use of prescriptive authority agreements to safely and effectively utilize the skills and services of advanced practice registered nurses and physician assistants.

§193.9. Delegation of Prescriptive Authority at a Facility-Based Practice Site.

(a) Acts that may be delegated. One or more physicians licensed by the board shall be authorized to delegate, to one or more physician assistants or advanced practice registered nurses acting under adequate physician supervision whose practice is facility-based at a hospital or licensed long-term care facility, prescribing or ordering of a drug or device if each of the physicians is: the medical director or chief of medical staff of the facility in which the physician assistant or advanced practice registered nurse practices, the chair of the facility's credentialing committee, a department chair of a facility department in which the physician assistant or advanced practice registered nurse practices, or a physician who consents to the request of the medical director or chief of medical staff to delegate the prescribing or ordering of a drug or device at the facility in which the physician assistant or advanced practice registered nurse practices.

(b) The limitations on the number of advanced practice registered nurses or physician assistants to whom a physician may delegate under §193.7(d) of this title (relating to Prescriptive Authority Agreements Generally) do not apply to a physician whose practice is facility-based under this chapter, subject to the limitations in subsection (c)(4) of this section.

(c) Limitations on authority to delegate. A physician's authority to delegate under this subsection is limited as follows:

(1) the delegation is pursuant to a physician's order, standing medical order, standing delegation order, or other order or protocol developed in accordance with policies approved by the facility's medical staff or a committee thereof as provided in facility bylaws;

(2) the delegation occurs in the facility in which the physician is the medical director, the chief of medical staff, the chair of the credentialing committee, a department chair, or a physician who consents to delegate under §157.054(a)(4) of the Act;

(3) the delegation does not permit the prescribing or ordering of a drug or device for the care or treatment of the patients of any other physician without the prior consent of that physician;

(4) delegation in a long-term care facility must be by the medical director and the medical director is limited to delegating the prescribing or ordering of a drug or device to no more than seven advanced practice registered nurses or physician assistants or their full-time equivalents; and

(5) under this section, a facility-based physician may not delegate at more than one hospital or more than two long-term care facilities pursuant to §157.054 of the Act; however, facility-based physicians are not prohibited from delegating the prescribing or ordering or drugs or devices under §157.0512 of the Act or §193.7 and §193.8 of this title (relating to Prescriptive Authority Agreements Generally and Prescriptive Authority Agreements: Minimum Requirements), at other practice locations, including hospital or long-term care facilities, provided that the delegation at those locations complies with all requirements under §157.0512 of the Act.

(6) Physician supervision. Physician supervision of the prescribing or ordering of a drug or device shall conform to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the advanced practice registered nurse or physician assistant. A physician shall provide continuous supervision, but the constant physical presence of the physician is not required.

§193.10. Registration of Delegation and Prescriptive Authority Agreements.

(a) The Board shall maintain and exchange information with the Texas Board of Nursing, and the Texas Physician Assistant Board, regarding the names, locations and license numbers, of each physician, advanced practice registered nurse, and physician assistant who has entered into a prescriptive authority agreement.

(1) The Board shall immediately notify the Texas Physician Assistant Board and the Texas Board of Nursing when a license holder of the Board who has registered a prescriptive authority agreement(s) becomes the subject of an investigation involving the delegation and supervision of prescriptive authority, as well as the final disposition of any such investigation. Such notifications shall be made subject to, and without waiving any confidentiality provisions related to board investigations provided for under the Act and this title.

(2) The Board shall maintain and share with the other boards a list of board license holders who have been subject to disciplinary action involving the delegation and supervision of prescriptive authority.

(b) Physicians who enter into prescriptive authority agreements with physician assistants or advanced practice registered nurses must register with the Board, within 30 days of signing the prescriptive authority agreement the following information:

(1) the name and license number of the physician assistant or advanced practice registered nurse to whom the delegation has been made;

(2) the date on which the prescriptive authority agreement was executed;

(3) the address(es) at which the advanced nurse practice registered nurse or physician assistant will be prescribing under the prescriptive authority agreement; and

(4) whether the prescriptive authority being exercised under the prescriptive authority agreement is being exercised in a practice servicing a medically underserved population.

(c) The board shall maintain and make available to the public, a searchable online lists of physicians, advanced practice registered nurses, and physician assistants who have entered into prescriptive authority agreements, and identify the physician, advanced practice registered nurse, or physician assistant, with whom each physicians, advanced practice registered nurse, or physician assistant has entered into a prescriptive authority agreement.

(d) A physician who delegates to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the certified registered anesthetist to administer an anesthetic or an anesthesia-related service is not required to register the name and license number of the certified registered nurse anesthetist with the board.

(e) A physician terminating a prescriptive authority agreement shall notify the board in writing within 30 days of such termination.

§193.11. Prescription Forms.

Prescription forms shall comply with applicable rules adopted by the Texas State Board of Pharmacy. A delegating physician is responsible for devising and enforcing a system to account for and monitor the issuance of prescriptions under the physician's supervision.

§193.12. Prescriptive Authority Agreement Inspections.

If the board receives a notice under §157.0513(a)(2) of the Act, the board or an authorized board representative may enter, with reasonable notice and at a reasonable time, unless the notice would jeopardize an investigation, a site where a party to a prescriptive authority agreement practices to inspect and audit any records or activities relating to the implementation and operation of the agreement. To the extent reasonably possible, the board and the board's authorized representative shall conduct any inspection or audit under this section in a manner that minimizes disruption to the delivery of patient care. The

board may use information obtained during the inspection for any purpose allowed under the law, including licensure and enforcement.

§193.13. Delegation to Certified Registered Nurse Anesthetists.

(a) In a licensed hospital or ambulatory surgical center a physician may delegate to a certified registered nurse anesthetist the ordering of drugs and devices necessary for a certified registered nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by the physician. The physician's order for anesthesia or anesthesia-related services does not have to be drug-specific, dose-specific, or administration-technique-specific. Pursuant to the order and in accordance with facility policies or medical staff bylaws, the nurse anesthetist may select, obtain, and administer those drugs and apply the appropriate medical devices necessary to accomplish the order and maintain the patient within a sound physiological status.

(b) This section shall be liberally construed to permit the full use of safe and effective medication orders to utilize the skills and services of certified registered nurse anesthetists.

§193.14. Delegation Related to Obstetrical Services.

(a) A physician may delegate to a physician assistant offering obstetrical services and certified by the board as specializing in obstetrics or an advanced practice registered nurse recognized by the Texas Board of Nursing as a nurse midwife the act or acts of administering or providing controlled substances to the nurse midwife's or physician assistant's clients during intra-partum and immediate post-partum care. The physician shall not delegate the use of a prescription sticker or the use or issuance of an official prescription form relating to the prescription of Schedule II controlled substance as described under §481.075 of the Health and Safety Code.

(b) The delegation of authority to administer or provide controlled substances under this section must be under a physician's order, medical order, standing delegation order, prescriptive authority agreement, or protocol which shall require adequate and documented availability for access to medical care.

(c) The physician's orders, medical orders, standing delegation orders, prescriptive authority agreements, or protocols shall provide for reporting or monitoring of client's progress including complications of pregnancy and delivery and the administration and provision of controlled substances by the nurse midwife or physician assistant to the clients of the nurse midwife or physician assistant.

(d) The authority of a physician to delegate under this section is limited to:

(1) seven nurse midwives or physician assistants or their full-time equivalents; and

(2) the designated facility at which the nurse midwife or physician assistant provides care.

(e) The administering or providing of controlled substances under this section shall comply with other applicable laws.

(f) In this section, "provide" means to supply one or more unit doses of a controlled substance for the immediate needs of a patient not to exceed 48 hours.

(g) The controlled substance shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws and shall include the patient's name and address; the drug to be provided; the name, address, and telephone number of the physician; the name, address, and telephone number of the nurse midwife or physician assistant; and the date.

§193.15. Delegated Drug Therapy Management.

(a) Purpose. This section is promulgated to promote the efficient administration and regulation of the delegation by physicians to pharmacists of drug therapy management pursuant to §157.001 of the Act (related to Delegation of Certain Functions).

(b) Delegation. A physician licensed to practice medicine in Texas may delegate to a properly qualified and trained pharmacist acting under adequate supervision the performance of specific acts of drug therapy management authorized by the physician through the physician's order, standing medical order, standing delegation order, or other order or protocol as provided for in this section.

(c) Drug therapy management. Drug therapy management is the performance of specific acts by pharmacists as authorized by a physician through written protocol. Drug therapy management does not include the selection of drug products not prescribed by the physician unless the drug product is named in the physician initiated protocol or the physician initiated record of deviation from a standing protocol. Drug therapy management may include the following listed in paragraphs (1) - (6) of this subsection:

(1) collecting and reviewing patient drug use histories;

(2) ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration;

(3) ordering drug therapy related laboratory tests;

(4) implementing or modifying drug therapy, including the authority to sign a prescription drug order for dangerous drugs as provided in §157.101(b-1) of the Act, following diagnosis, initial patient assessment, and ordering of drug therapy by a physician, as detailed in the protocol, provided that the pharmacist:

(A) practices in a hospital, hospital-based clinic or an academic health care institution that has bylaws and a medical staff policy that permit a physician to delegate to a pharmacist the management of a patient's drug therapy;

(B) provides the name, address, and telephone number of the pharmacist and of the delegating physician on each prescription signed by the pharmacist; and

(C) the pharmacist provides a copy of the protocol to the Texas State Board of Pharmacy;

(5) generically equivalent drug selection if the physician's signature does not clearly indicate that the prescription must be dispensed as written; or

(6) any other drug therapy related act delegated by a physician.

(d) Supervision. Physician supervision shall be considered adequate for purposes of this section if the delegating physician is in compliance with this section and the physician:

(1) is responsible for the formulation or approval of the written protocol and any patient-specific deviation from the protocol and review of the written protocol and any patient-specific deviations from the protocol at least annually and the services provided to a patient under the protocol on a schedule defined in the written protocol;

(2) has established and maintains a physician-patient relationship with each patient provided drug therapy management by a delegated pharmacist and informed the patient that drug therapy will be managed by a pharmacist under written protocol;

(3) is geographically located so as to be able to be physically present daily to provide medical care and supervision;

(4) receives, on a schedule defined in the written protocol, a periodic status report on the patient, including any problem or complication encountered;

(5) is available through direct telecommunication for consultation, assistance, and direction.

(e) Written protocol. Written protocols for purposes of this section shall mean a physician's order, standing medical order, standing delegation order, or other written order.

(1) A written protocol must contain at a minimum the following listed in subparagraphs (A) - (E) of this paragraph:

(A) a statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of drug therapy management;

(B) a statement identifying the individual pharmacist authorized to dispense drugs and to engage in drug therapy management as delegated by the physician;

(C) a statement identifying the types of drug therapy management decisions that the pharmacist is authorized to make which shall include:

(i) a statement of the ailments or diseases, drugs, and type of drug therapy management authorized; and

(ii) a specific statement of the procedures, decision criteria, or plan the pharmacist shall follow when exercising drug therapy management authority;

(D) a statement of the activities the pharmacist shall follow in the course of exercising drug therapy management authority, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made. Documentation shall be recorded within a reasonable time of each intervention and may be performed on the patient medication record, patient medical chart, or in a separate log book; and

(E) a statement that describes appropriate mechanisms and time schedule for the pharmacist to report to the physician monitoring the pharmacist's exercise of delegated drug therapy management and the results of the drug therapy management.

(2) A standard protocol may be used, or the attending physician may develop a drug therapy management protocol for the individual patient. If a standard protocol is used, the physician shall record what deviations, if any, from the standard protocol are ordered for that patient.

(f) Review and revision of protocols.

(1) At least annually, written protocols shall be reviewed by the physician and, if necessary, revised.

(2) Documentation of all services provided to the patient by the pharmacist shall be reviewed by the physician on the schedule established in the protocol.

(g) Construction and interpretation. This section shall not be construed or interpreted to restrict the use of a pre-established health care program or restrict a physician from authorizing the provision of patient care by use of a pre-established health care program if the patient is institutionalized and the care is to be delivered in a licensed hospital with an organized medical staff that has authorized standing delegation orders, standing medical orders, or protocols. This section may not be construed to limit, expand, or change any provision of law concerning or relating to therapeutic drug substitution or administration of medication, including the Texas Pharmacy Act, Texas Occupations Code Chapter 551.

§193.16. Delegated Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol.

(a) Purpose. This section is promulgated to promote the efficient administration and regulation of the delegation by physicians to pharmacists of the administration of immunizations or vaccinations under written protocol pursuant to the §157.001 of the Act (related to Delegation of Certain Functions).

(b) Delegation. A physician licensed to practice medicine in Texas may delegate to a properly qualified and trained pharmacist acting under adequate supervision the administration of immunizations and vaccinations authorized by the physician through the physician's order, standing medical order, standing delegation order, or other order or protocol as provided for in this section.

(c) Delegated Administration of Immunizations and Vaccinations under Written Protocol. Administration of Immunizations and Vaccinations does not include the selection of drug products not prescribed by the physician unless the drug product is named in the physician initiated protocol.

(d) Supervision. Physician supervision shall be considered adequate for purposes of this section if the delegating physician is in compliance with this section and the physician:

(1) is responsible for the formulation or approval of the physician's order, standing medical order, standing delegation order, or other order or written protocol and periodically reviews the order or protocol and the services provided to the patient under the order or protocol on a schedule defined in the written protocol;

(2) has established a physician-patient relationship with each patient under 14 years of age and referred the patient to the pharmacist;

(3) is geographically located so as to be easily accessible to the pharmacist administering the immunization or vaccination;

(4) receives, on a schedule defined in the written protocol, a periodic status report on the patient, including any problem or complication encountered; and

(5) is available through direct telecommunication for consultation, assistance, and direction.

(e) Written protocol. Written protocols for purposes of this section shall mean a physician's order, standing medical order, standing delegation order, or other written order.

(1) A written protocol must contain at a minimum the following listed in subparagraphs (A) - (F) of this paragraph:

(A) a statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of administration of immunizations or vaccinations;

(B) a statement identifying the individual pharmacist authorized to administer immunizations or vaccinations as delegated by the physician;

(C) a statement identifying the location(s) at which the pharmacist may administer immunizations or vaccinations which may not include where the patient resides, except for a licensed nursing home or hospital;

(D) a statement identifying the immunizations or vaccinations that may be administered by the pharmacist;

(E) a statement identifying the activities the pharmacist shall follow in the course of administering immunizations or vaccinations including procedures to follow in the case of reactions following administration; and

(F) a statement that describes the content of, and the appropriate mechanisms for the pharmacist to report the administration of immunizations or vaccinations to the physician issuing the written protocol within 24 hours of administering the immunization or vaccination.

(2) A standard protocol may be used, or the physician may develop an immunization or vaccination protocol for the individual patient. If a standard protocol is used, the physician shall record what deviations, if any, from the standard protocol are ordered for that patient.

(f) Review and revision of protocols.

(1) At least annually, written protocols shall be reviewed by the physician and, if necessary, revised.

(2) Documentation of the administration of immunizations or vaccinations to the patient by a pharmacist shall be reviewed by the physician on the schedule established in the protocol.

(g) Construction and interpretation. This section shall not be construed or interpreted to restrict the use of a pre-established health care program or restrict a physician from authorizing the provision of patient care by use of a pre-established health care program if the patient is institutionalized and the care is to be delivered in a licensed hospital with an organized medical staff that has authorized standing delegation orders, standing medical orders, or protocols. This section may not be construed to limit, expand, or change any provision of law concerning or relating to therapeutic drug substitution or administration of medication, including the Texas Pharmacy Act, Texas Occupations Code §§554.001 - 554.004.

§193.17. Nonsurgical Medical Cosmetic Procedures.

(a) Purpose. The purpose of this section is to establish the duties and responsibilities of a physician who performs or who delegates the performance of a nonsurgical medical cosmetic procedure (hereafter referred to as "Procedure"). These procedures can result in complications and the performance of these procedures is the practice of medicine. This rule shall not be interpreted to allow individuals to perform procedures without either a physician or midlevel practitioner being onsite, or a physician being available for emergency consultation or appointment in the event of an adverse outcome.

(b) Definitions.

(1) Midlevel practitioner--A physician assistant or advanced practice registered nurse.

(2) Prescription medical device--A device that the federal Food and Drug Administration has designated as a prescription medical device, and can be sold only to persons with prescriptive authority in the state in which they reside.

(3) Procedure--A nonsurgical medical cosmetic procedure, including but not limited to the injection of medication or substances for cosmetic purposes, the administration of colonic irrigations, and the use of a prescription medical device for cosmetic purposes.

(c) Applicability. This section does not apply to:

(1) surgery as defined under Texas Occupations Code, §151.002(a)(14);

(2) the practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(3) the use of nonprescription devices;

(4) intravenous therapy;

(5) procedures performed at a physician's practice by the physician or midlevel practitioners acting under the physicians supervision; or

(6) laser hair removal procedures performed in accordance with Texas Health and Safety Code, Chapter 401, Subchapter M.

(d) Physician Responsibilities.

(1) A physician must be appropriately trained, including hands-on training, in a Procedure prior to performing the Procedure or delegating the performance of a Procedure. The physician must keep a record of his or her training in the office and have it available for review upon request by a patient or a representative of the board.

(2) Prior to authorizing a Procedure, a physician, or a midlevel practitioner acting under the delegation of a physician, must:

(A) take a history;

(B) perform an appropriate physical examination;

(C) make an appropriate diagnosis;

(D) recommend appropriate treatment;

(E) develop a detailed and written treatment plan;

(F) obtain the patient's informed consent;

(G) provide instructions for emergency and follow-up care;

(H) prepare and maintain an appropriate medical record;

(I) have signed and dated written protocols as described in paragraph (7) of this subsection that are detailed to a level of specificity that the person performing the Procedure may readily follow; and

(J) have signed and dated written standing orders.

(K) The performance of the items listed in subparagraphs (A) - (J) of this paragraph must be documented in the patient's medical record.

(3) After a patient has been evaluated and diagnosed, as described in paragraph (2) of this subsection, qualified unlicensed personnel may perform a procedure only if:

(A) a physician or midlevel practitioner is onsite during the procedure; or

(B) a delegating physician is available for emergency consultation in the event of an adverse outcome, and if the physician considers it necessary, be able to conduct an emergency appointment with the patient.

(4) Regardless of who performs the Procedure, the physician is ultimately responsible for the safety of the patient and all aspects of the Procedure.

(5) Regardless of who performs the Procedure, the physician is responsible for ensuring that each Procedure is documented in the patient's medical record. A Procedure performed by unlicensed personnel must be timely co-signed by a supervising physician.

(6) The physician must ensure that the facility at which Procedures are performed, there is a quality assurance program pertaining to Procedures that includes the following:

(A) a mechanism to identify complications and adverse effects of treatment and to determine their cause;

(B) a mechanism to review the adherence to written protocols by all health care personnel;

(C) a mechanism to monitor the quality of treatments;

(D) a mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols; and

(E) ongoing training to maintain and improve the quality of treatment and performance of Procedures by health care personnel.

(7) A physician may delegate Procedures only at a facility at which the physician has either:

(A) approved in writing the facility's written protocols pertaining to the Procedures; or

(B) developed his own protocols for the Procedures as described in paragraph (2)(I) of this subsection.

(8) The physician must ensure that a person performing a Procedure has appropriate training in, at a minimum:

(A) techniques for each Procedure;

(B) cosmetic or cutaneous medicine;

(C) indications and contraindications for each Procedure;

(D) pre-procedural and post-procedural care;

(E) recognition and acute management of potential complications that may result from the Procedure; and

(F) infectious disease control involved with each treatment.

(9) The physician has a written office protocol for the person performing the Procedure to follow in performing Procedure delegated. A written office protocol must include, at a minimum, the following:

(A) the identity of the physician responsible for the delegation of the Procedure;

(B) selection criteria to screen patients by the physician or midlevel practitioner for the appropriateness of treatment;

(C) a description of appropriate care and follow-up for common complications, serious injury, or emergencies;

(D) a statement of the activities, decision criteria, and plan the physician, or midlevel practitioner, shall follow when performing or delegating the performance of a Procedure, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician or midlevel practitioner concerning specific decisions made; and

(E) a description of what information must be documented by the person performing the Procedure.

(10) The physician ensures that each person performs each Procedure in accordance with the written office protocol.

(11) Each patient signs a consent form prior to treatment that lists potential side effects and complications, and the identity and titles of the individual who will perform the Procedure.

(12) Each person performing a Procedure must be readily identified by a name tag or similar means that clearly delineates the identity and credentials of the person.

(13) Any time a Procedure is performed, at least one person trained in basic life support must be onsite.

§193.18. Pronouncement of Death.

(a) Purpose. These rules are promulgated under the authority of the Medical Practice Act, §157.001, to allow physicians to receive information from Texas licensed vocational nurses through electronic communication for the purpose of making a pronouncement of death. Electronic communication includes, but is not limited to telephone, facsimile transmission, or electronic mail.

(b) Do not resuscitate order. A do not resuscitate (DNR) order must be kept in the patient's file.

(c) Required information. In order to make a pronouncement of death through electronic communication, a physician must receive, at a minimum, the following information regarding the condition of the patient:

(1) absence of palpable pulse for a minimum of 60 seconds;

(2) absence of discernible blood pressure for a minimum of 60 seconds;

(3) absence of evidence of respiration for a minimum of 60 seconds;

(4) absence of evidence of heartbeat for a minimum of 60 seconds; and

(5) other information as the physician may require.

(d) Follow-up by physician. If a physician makes a pronouncement of death based on information received pursuant to subsection (c) of this section, the physician retains responsibility for all acts related to this pronouncement.

§193.19. Collaborative Management of Glaucoma.

(a) Purpose. The purpose of this section is to implement the mandate of the 76th Legislature as it relates to the Optometry Act, Texas Occupations Code Chapter 351, regarding the minimum standards for the collaborative management of glaucoma.

(b) Minimum requirements. At a minimum, the treating ophthalmologist should follow the guidelines outlined in paragraphs (1) - (10) of this subsection.

(1) The ophthalmologist will confirm the diagnosis within 30 days of the diagnosis of glaucoma made by the optometrist. While the ophthalmologist may, in his or her discretion, require that the patient visit the ophthalmologist for a face-to-face visit, such a face-to-face visit is not mandated. The ophthalmologist may, at the ophthalmologist's discretion, rely upon the results of diagnostic tests performed originally by the optometrist, unless reaffirmation is needed.

(2) The ophthalmologist must communicate in written form the confirmation of the diagnosis within 30 days, as well as the refinement of the treatment plan as recommended by the optometrist.

(3) A proper medical record must be generated for each patient by the ophthalmologist and shall include all correspondence and testing results. The medical record must also include a written note made in the record by the ophthalmologist or a copy of the written informed consent demonstrating that the patient understands that he or she is participating in a co-management of primary open angle glaucoma.

(4) The necessity for follow-up visits will be at the discretion of the ophthalmologist based on the communication of the patient's progress by the optometrist.

(5) The ophthalmologist must report any irregular behavior of the optometrist to the Texas Medical Board for referral to the Texas Optometry Board.

(6) The ophthalmologist must enter into the patient's written medical records that the ophthalmologist has elected to enter into a co-management agreement with an optometrist.

(7) It is at the discretion of the ophthalmologist to complete a clinical skills assessment with each optometrist in which a co-management arrangement exists. The ophthalmologist will, however, receive written confirmation and documentation that the co-managing optometrist has completed all of the requirements of the Optometric Health Care Advisory Committee to obtain the designation of "optometric glaucoma specialist."

(8) A physician may charge a reasonable consultation fee for a consultation given when a patient is referred with a diagnosis of primary open angle glaucoma.

(9) When a physician examines a patient involved in a co-management consultation with a therapeutic optometrist for treatment of primary open angle glaucoma, the physician shall forward to the therapeutic optometrist, not later than the 30th day following the examination, a written report on the results of the examination. A physician who, for a medically appropriate reason, does not return a patient to the therapeutic optometrist, shall state in the physician's report to the therapeutic optometrist the specific medical reason for failing to return the patient.

(10) In order to enter into a co-management agreement with an optometrist, there must be an agreement between the two professionals that, following each visit, specified information, previously agreed upon by both the ophthalmologist and the optometrist, about the patient examined will be forwarded to the other practitioner.

§193.20. Immunization of Persons Over 65 by Physicians' Offices.

(a) A physician responsible for the management of a physician's office that provides ongoing primary or principal medical care to persons over 65 years of age ("elderly persons") shall offer, to the extent possible as determined by the physician, the opportunity to receive the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the office. If the physician decides that it is not feasible to offer the vaccine, the physician must provide the person with information on other options for obtaining the vaccine.

(b) The physician's office must offer:

(1) the influenza vaccine in October and November, and if the vaccine is available, December; and

(2) the pneumococcal vaccine year-round.

(c) The physician must adopt a protocol providing that any person administering a vaccine in the physician's office must:

(1) ask whether the elderly person is currently vaccinated against the influenza virus or pneumococcal disease, as appropriate;

(2) administer the vaccine under the protocol after an assessment has been made for contraindications; and

(3) permanently document the vaccination in the elderly person's medical records.

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

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 307. TEXAS SURFACE WATER QUALITY STANDARDS

30 TAC §§307.2 - 307.4, 307.6 - 307.10

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 30 TAC §307.6 and §307.10 are not included in the print version of the Texas Register. The figures are available in the on-line version of the September 13, 2013, issue of the Texas Register.)

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) proposes amendments to §§307.2 - 307.4 and 307.6 - 307.10.

Background and Summary of the Factual Basis for the Proposed Rules

The Federal Water Pollution Control Act, §303 (commonly referred to as the Clean Water Act, 1972, 33 United States Code, §1313(c)), requires all states to adopt water quality standards for surface water. A water quality standard consists of the designated beneficial use or uses of a water body or a segment of a water body and the water quality criteria that are necessary to protect the use or uses of that particular water body. Water quality standards are the basis for establishing discharge limits in wastewater and stormwater discharge permits, setting instream water quality goals for total maximum daily loads (TMDLs), and providing water quality targets to assess water quality monitoring data.

The states are required under the Clean Water Act to review their water quality standards at least once every three years and revise them, if appropriate. States review standards because new scientific and technical data may be available that have a bearing on the review. Further, environmental changes over time may also warrant the need for a review. Where water quality data do not meet established uses, the standards must be periodically reviewed to see if uses can be attained. Additionally, water quality standards may have been previously established for the protection and propagation of aquatic life and for recreation in and on the water without sufficient data to determine whether the uses were attainable. Finally, changes in the Texas Water Code (TWC), in the Clean Water Act, or in the United States Environmental Protection Agency's (EPA) regulations may necessitate reviewing and revising standards to ensure compliance with current statutes and regulations.

Following adoption of revised water quality standards by the commission, the Governor or designee must submit the officially adopted standards to the EPA Region 6 Administrator for review. The Regional Administrator reviews the state's standards to determine compliance with the Clean Water Act and implementing

regulations. Standards are not applicable to regulatory actions under the Clean Water Act until approved by the EPA.

The Texas statewide surface water quality standards were last amended in June 2010. The EPA approved the majority of the state's revised standards by August 2012.

Reviews and revisions of the water quality standards address many provisions that apply statewide, such as criteria for toxic pollutants. Other revisions address the water quality uses and/or criteria that are applicable to individual water bodies. An extensive review of water quality standards for individual water bodies is often initiated when the existing standards appear to be inappropriate for water bodies that are listed as impaired under the Clean Water Act, §303(d), or that are potentially affected by permitted wastewater discharges or other permitting actions.

States may modify designated uses when it can be demonstrated, through a Use Attainability Analysis (UAA), that attaining the current designated uses and/or criteria is not appropriate. Most changes in designated uses are based on a demonstration that natural characteristics of a water body cannot attain the currently designated uses and/or criteria. Natural characteristics include temperature, pH, dissolved oxygen, diversity of aquatic organisms, amount of streamflow, physical conditions such as depth, or natural background pollutant levels. Conversely, a UAA might demonstrate that the currently designated uses and criteria are appropriate, or even that they should be more stringent.

UAAs can require several years of additional sampling studies, or they may focus on a long-term evaluation of existing historical data. For UAAs on water bodies that are potentially impacted by pollutant loadings above natural background, sampling and evaluation is often conducted on similar but relatively unimpacted water bodies in order to determine reference conditions that can be applied to the water body of concern.

The focus of UAAs depends on the uses and criteria that need to be re-evaluated. The applicable category of aquatic life use is determined by repeatedly sampling fish or invertebrates in relatively unimpacted areas and by applying quantitative indices such as indices of biotic integrity to the sampling data of the biological communities. UAAs to assign aquatic recreational uses include assessing physical and hydrological conditions, observing existing recreation, and collecting information on current and historical recreational activities. Dissolved oxygen criteria are evaluated by monitoring dissolved oxygen over numerous (usually ten) 24-hour periods in relatively unimpacted areas. Site-specific criteria for toxic pollutants are evaluated by placing selected small aquatic organisms in water samples from the site and exposing them to different doses of the toxic pollutant of concern. Criteria for pH, dissolved minerals, and temperature are often evaluated by analyzing extensive long-term recent and historical data for the water body of concern and similar water bodies in the same area.

The commission is proposing editorial revisions as well as substantive changes. Editorial revisions would be adopted to improve clarity, to make grammatical corrections, and to renumber or reletter subdivisions as appropriate.

Numerous revisions of toxic criteria are proposed to incorporate new data on toxicity effects. Also, proposed revisions provide clarity on how water quality standards would be assessed using instream monitoring data. Numerous revisions are proposed for the uses and criteria of individual water bodies in order to incorporate new data and the results of recent UAAs.

As directed by the commissioners at the August 21, 2013, Agenda Meeting, the TCEQ is seeking comment on the proposed revision to potentially add a second category of primary contact recreation (primary contact recreation 2). This proposed revision is shown in §§307.3, 307.4, and 307.7, as described in the Section by Section Discussion section of this preamble. As part of this proposal, the term "primary contact recreation" would change to primary contact recreation 1 throughout Chapter 307.

Section by Section Discussion

§307.2, Description of Standards

Proposed changes to §307.2 are strictly editorial. Editorial revisions are proposed to improve clarity.

§307.3, Definitions and Abbreviations

Proposed changes to §307.3 include a new definition in §307.3(a) for "Primary contact recreation 2," and the term "Primary contact recreation" is proposed to be changed to "Primary contact recreation 1." Also, the term "handfishing" is proposed to be added to the definition for "Primary contact recreation 1." In addition, new definitions are proposed for "Biotic ligand model," "Industrial cooling water area," and "Total maximum daily load." Other revisions were editorial revisions and are proposed to improve clarity.

§307.4. General Criteria

Proposed changes to §307.4 include adding industrial cooling water areas as surface waters that must be maintained so as to not interfere with reasonable use of such waters. Proposed revisions also specify that numerical temperature criteria are not applicable in designated industrial cooling water areas.

The horizontal boundaries of the industrial cooling water area would be specified in the applicable wastewater permit. Maximum temperature differentials for freshwater streams, freshwater lakes and impoundments, tidal river reaches, and bay and gulf waters, as well as maximum temperature criteria specified in Appendix A of §307.10, would not be applicable within industrial cooling water areas.

In §307.4(j), a proposed description is added about the applicability of primary contact recreation 2, as a new category of recreational use. This proposed provision clarifies that primary contact recreation 2 is only applicable when designated for an individual water body in Appendix A or G of §307.10. Also in §307.4(j), the term primary contact recreation is proposed to change to primary contact recreation 1.

§307.6, Toxic Materials

Proposed changes to §307.6 include revisions of some numeric criteria as well as editorial changes to improve clarity.

Section 307.6(c)(1), Table 1, which lists numeric criteria for the protection of aquatic life, includes proposed revisions to footnotes to render the rule more accessible to individuals using assistive technology such as screen reader programs. For added clarity, proposed revisions also include the addition of parentheses around the correction factors at the beginning of the criteria equations for cadmium and lead.

Numerous changes are proposed to the human health criteria in Table 2, §307.6(d)(1). Revisions are proposed to the criteria for the following nine chemicals to included updated cancer potency factors and animal body weights recommended by the EPA: benzo(a)anthracene, bis(2-chloroethyl)ether, carbon tetrachloride, dichloromethane, hexachloroethane, pen-

tachlorophenol, 1,1,2,2-tetrachloroethane, tetrachloroethylene, and trichloroethylene. Revised criteria for two chemicals, nitrobenzene and thallium, are revised based on updated reference doses recommended by the EPA. Proposed criteria revisions for the following nine chemicals are based on changes in bioconcentration factors: cresols, danitol, 1,2-dibromomethane, dicofol, hexachlorophene, methoxychlor, methyl ethyl ketone, pyridine, and 2,4,5-TP. Revised criteria for dieldrin are proposed to correct a calculation error in the previous version of the rule. Human health criteria for 4,4'-DDD, 4,4'-DDE, 4,4'-DDT, dioxins/furans, mercury, and polychlorinated biphenyls, which were previously expressed as fish tissue-based concentrations, are revised to water column-based concentrations. Additional changes include revising the mercury criteria back to the previously EPA-approved criteria found in the 2000 version of the rule. The proposed change to the mercury criteria is due to the EPA disapproval of the revised criteria in the 2010 Texas Surface Water Quality Standards in an action letter dated June 29, 2011. Revisions to footnotes were included to render the rule more accessible to individuals using assistive technology such as screen reader programs.

Proposed changes to §307.6(d)(2) and (5) clarify that human health concentration criteria to prevent contamination of drinking water, fish, and other aquatic life to ensure that they are safe for human consumption apply to all water bodies identified as having a public drinking water supply use in Appendix A of §307.10 or as a sole-source surface drinking water supply in Appendix B of §307.10. The reference to tissue-based criteria in §307.6(d)(10) is removed to be consistent with the revisions to the criteria in Table 2, §307.6(d)(1).

§307.7, Site-Specific Uses and Criteria

In §307.7(b)(1), primary contact recreation 2 is proposed as an additional category of recreational use for freshwater, with a geometric mean criterion for *E. coli* of 206 per 100 milliliters (mL). Throughout this section, the term primary contact recreation is proposed to change to primary contact recreation 1. Proposed changes to §307.7 remove language allowing fecal coliform to be used as an alternative indicator of recreational suitability in high saline inland waters. Additional non-substantive, grammatical changes are proposed for additional clarity.

§307.8, Application of Standards

Proposed changes to §307.8 include adding language to more clearly state that different mixing zone sizes may apply to different types of numeric criteria. Language is also added to §307.8(b)(2)(C) to specify that the 50-foot radius zone of initial dilution applies to the Gulf of Mexico as well as other large, tidal water bodies. Additional non-substantive, grammatical changes are proposed for additional clarity.

§307.9, Determination of Standards Attainment

Proposed changes to §307.9 include proposed revisions to §307.9(c) to clarify that samples taken for the purposes of standards attainment determinations are collected and preserved in accordance with reliable procedures acceptable to the commission. The proposed changes would also clarify attainment is achieved when the water column is entirely mixed for chloride, sulfate, total dissolved solids, dissolved oxygen, or chlorophyll *a* standards.

Proposed changes to §307.9(e)(1) would clarify that the long-term mean of chloride, sulfate, and total dissolved solids data may be used to demonstrate compliance with provisions specified in §307.7(b)(4)(A).

Proposed revisions to §307.9(e)(3) include removal of the high-flow exemption for bacteria samples taken during extreme hydrologic conditions, such as very high flows and flooding immediately after heavy rains. Clarification of the time period and hydrologic conditions during which the high-flow exemption would apply would also be removed. Proposed removal of the high-flow exemption and applicable conditions are a result of the EPA's disapproval of these provisions in an action letter dated June 29, 2011. Other proposed revisions to this section specify that attainment of bacteria standards would allow consideration of statistical variability to reduce uncertainty in determinations. Evaluations of bacteria standards would be in accordance with applicable sections of the TCEQ Guidance for Assessing and Reporting Surface Water Quality in Texas.

The proposed change to §307.9(e)(7) is to correct a reference to screening levels for nutrients. During the proposal phase of the 2010 revision of this rule, nutrient screening levels were included for consideration as part of §307.10, Appendix E; however, screening levels were not adopted as part of this appendix in the final rule. The proposed change removes the reference to screening levels that was inadvertently included in the final version of the rule.

Proposed changes to §307.9(f) would remove deferment of impairment for water bodies with presumed high aquatic life uses and associated timeframes, notice, and public comment in the Texas Integrated Report. This change is due to the EPA's disapproval of these provisions in an action letter dated August 24, 2012. Other proposed revisions to this section specify that standards attainment of biological integrity would allow consideration of statistical variability to reduce uncertainty in determinations in accordance with applicable sections of the TCEQ Guidance for Assessing and Reporting Surface Water Quality in Texas.

§307.10, Appendices A - G

In Appendix A, designations of primary contact recreation, as indicated by PCR, are proposed to change to primary contact recreation 1, as indicated by PCR1. Proposed changes to Appendix A include removal of language allowing use of fecal coliform as an alternative indicator of recreational suitability in high saline inland waters.

The proposed changes to the aquatic life use for Upper Pecos River (2311) from high to limited is based on the results of a UAA. In addition, revised site-specific dissolved oxygen criteria are proposed based on the results of UAAs for Pine Island Bayou (0607) and Lower Atascosa River (2107). Footnotes are added for Hillebrandt Bayou (0704) and Upper Pecos River (2311) to propose site-specific minimum 24-hour dissolved oxygen criteria.

Proposed changes to the 24-hour minimum dissolved oxygen criteria for Lower Laguna Madre (2491) and Oso Bay (2485) are due to the EPA's disapproval of the 24-hour minimum dissolved oxygen criteria for these segments in the 2010 Texas Surface Water Quality Standards.

Proposed changes in Appendix A also include the creation of five new segments, all of which are currently portions of existing segments, based on differing hydrological conditions: Middle Oyster Creek (1258), created from the upper portion of Oyster Creek Above Tidal (1110); Leon River Above Belton Lake (1259), created from the lower portion of the Leon River Be-

low Proctor Lake (1221); Upper Atascosa River (2118), created from the middle portion of Atascosa River (2107); Rio Grande Below Rio Conchos (2315), created from the upper portion of Rio Grande Above Amistad Reservoir (2306); and Upper Laguna Madre (2490), created from the upper portion of Laguna Madre (2491). In addition, two segments are being renamed (2107 - Lower Atascosa River and 2491 - Lower Laguna Madre) due to the creation of new segments referenced above.

Changes being proposed also include removal of the public water supply use for Upper Oyster Creek Above Tidal (1110), removal of all footnote language allowing fecal coliform to be used as an alternative bacteria indicator in high saline inland waters, and revising language in the footnotes for consistency, for example, changing all references in the footnotes of "ft^3/s" to "cfs", "mile/s" to "mi", "kilometer/s" to "km", "gauge number" to "Gauging Station", removing segment names when the segment number is listed, and other grammatical changes.

Revisions to dissolved minerals criteria are proposed for six segments based on new calculations using updated information: Little Wichita River (0211), San Gabriel River (1214), San Gabriel/North Fork San Gabriel River (1248), Lake Corpus Christi (2103), Lower Atascosa River (2107), and Rio Grande Above Amistad Reservoir (2306).

The pH range criteria have been revised for Wright Patman Lake (0302), Lake Palestine (0605), and Cedar Creek Reservoir (0818) based on new calculations using updated information.

Proposed changes to Appendix B include both the addition of new water bodies that qualify as sole-source drinking water supplies and the deletion of water bodies that no longer qualify as sole-source drinking water supplies, in accordance with TWC, §26.0286. Proposed additions to Appendix B are: Lake Kickapoo (0213), Big Creek Lake (0303), Sabine River Above Caney Creek (0503), Sabine River Above Toledo Bend Reservoir (0505), Lake Murvaul (0509), Lower Neches Valley Authority Canal (0602), Neches River Below B.A. Steinhagen Lake (0602), Trinity River Tidal (0801), Trinity River Above Lake Livingston (0804), Lake Grapevine (0826), Lake Houston (1002), Brazos River Below Navasota River (1202), Navasota River Below Lake Limestone (1209), Lake Mexia (1210), Lake Graham/Lake Eddleman (1231), White River Lake (1240), Lake Georgetown (1249), Brady Creek Reservoir (1416), Concho River (1421), Lake Texana (1604), Guadalupe River Below San Antonio River (1802), Guadalupe River Below San Marcos (1803), Lake Dunlap (1804), Lake Placid (1804), Lake Wood (1804), Guadalupe River Above Canyon Lake (1806), Guadalupe River Below Canyon Dam (1812), Upper Blanco River (1813), Medina River Below Medina Diversion Lake (1903), and Boerne Lake (1908). Proposed deletions from Appendix B are: Caney Creek Reservoir (0302), Cooper Lake (0307), Big Cypress Creek Below Lake O' the Pines (0402), Trinity River (0803), Lake Waxahachie (0816), Lavon Lake (0821), Lake Weatherford (0832), Lake Amon G. Carter (0834), Lake J.B. Thomas (1413), O.H. Ivie Reservoir (1433), and Terminal Reservoir (1802). Non-substantive editorial corrections are made in Appendix B as needed.

Proposed changes to Appendix C include the addition of descriptions for new segments and revisions to descriptions of existing segments affected by the creation of new segments in Appendix C. Middle Oyster Creek is added as new Segment 1258 based on hydraulic differences with the remainder of Upper Oyster Creek Above Tidal (1110); Upper Atascosa River is added as new Segment 2118 based on the results of an aquatic life UAA; the Rio Grande Below Rio Conchos is added as new Segment 2315 based on hydraulic differences, due to spring flow, with the remainder of Rio Grande Above Amistad Reservoir (2306); Upper Laguna Madre is added as new Segment 2490 based on comments by the EPA in an action letter dated August 24, 2012; and Leon River Above Belton Lake is added as new Segment 1259 based on stakeholder comments. The upper boundaries of Oyster Creek Above Tidal (1110), Lower Atascosa River (2107), and Rio Grande Above Amistad Reservoir (2306) are changed as a result of creating these new segments. The creation of Leon River Above Belton Lake (1259) necessitates changing the lower boundary of Leon River Below Proctor Lake (1221). The name of Segment 2491 is changed to Lower Laguna Madre to distinguish it from the newly created Upper Laguna Madre (2490).

Segment boundary revisions are proposed for Pine Island Bayou (0607) and Lower Atascosa River (2107) based on results of aquatic life UAAs that identified differing hydrologic characteristics within the classified segments. Upstream portions with different hydrologic characteristics are removed and placed in Appendix D. The boundary of Trinity River Tidal (0801) is updated to reflect the addition of a saltwater barrier. The upper boundary of International Falcon Reservoir (2303) is updated to better describe the normal pool elevation of the lake, and the description of the lower boundary of Rio Grande Below Amistad Reservoir (2304) is updated to match the upper boundary of International Falcon Reservoir (2303).

Revisions are proposed to descriptions of the following segments to clarify or to correct clerical errors in existing descriptions: Old River is added to the description for Houston Ship Channel Tidal (1006), the description of the lower boundary of the Colorado River Tidal (1401) is changed from the Gulf of Mexico to Matagorda Bay because a diversion channel now connects the segment to Matagorda Bay, and Rio Grande Below Amistad Reservoir (Segment 2304) boundary is updated based on more accurate measurements.

The normal pool elevation is corrected for Lake Travis (1404) based on information from the Texas Water Development Board.

The words "kilometer" and "kilometers" are changed to the abbreviation "km" and the words "mile" and "miles" are changed to the abbreviation "mi" for consistency with the rest of the rule.

Proposed changes to Appendix D include the addition of eight water bodies with designated aquatic life uses and dissolved oxygen criteria. The additions are mainly due to the results of receiving water assessments; however, some are the result of more extensive investigations via a UAA. Water bodies added because of UAAs are indicated with an asterisk (*). All water bodies are tributaries within the listed segment numbers as follows: Pine Island Bayou* (0607); Willow Creek* (0607); Town Creek (0831); Flag Lake Drainage Canal (1111); Skull Creek* (1402); Wilbarger Creek (1428); unnamed tributary of Wilbarger Creek (1428); and Atascosa River* (2118). UAAs also led to the revision of two existing Appendix D entries: Boggy Creek (0607); and Cypress Creek (0608).

Other proposed changes include: segment number update for West Prong Atascosa River (2118) due to changes in segment boundaries; description change to South Mayde Creek (1014) due to EPA comments; correction of county name in the first entry for Dry Creek (1428); removal of county names in descriptions to prevent duplication of information; the addition of county names to some descriptions to clarify the full extent of streams;

and footnotes added to define seasonal dissolved oxygen criteria for a number of water bodies.

The seasonal dissolved oxygen as described in the footnote for the Lavaca River (1602), is proposed to be changed from an average of 2.0 milligrams per Liter (mg/L) and a minimum of 1.0 mg/L to an average of 3.0 mg/L and a minimum of 2.0 mg/L due to EPA disapproval of the criteria in the 2010 Texas Surface Water Quality Standards. Editorial changes are made for consistency, and misspellings in city and stream names are corrected.

Proposed changes to Appendix E include the addition of two new site-specific copper water-effect ratios in the watersheds of Segments 0506 and 0823, the addition of one new site-specific zinc water-effect ratio in the watershed of Segment 0601, the addition of one new site-specific nickel water-effect ratio in the watershed of Segment 1005, and the addition of two new site-specific aluminum water-effect ratios in the watersheds of Segments 0611 and 1005. Changes are proposed to existing site-specific criteria for lead in the watershed of Segment 0404 in order to adjust the criteria by the correction factor applied to all statewide criteria calculations for lead found in Table 1 of §307.6(c)(1). Footnotes are added to the "Parameter" column for 25 existing entries to clearly state whether the site-specific parameter applies to the entire water body or to only a portion of the water body.

Proposed revisions to Appendix F include removing the following segments and their associated numeric nutrient criteria for the following 36 reservoirs: Palo Duro Reservoir (0100), Lake Arrowhead (0212), Lake Tanglewood (0229), Wright Patman Lake (0302), Lake Tawakoni (0507), Murvaul Lake (0509), Lake Fork Reservoir (0512), Lake Palestine (0605), Lake Livingston (0803), Lake Worth (0807), Eagle Mountain Reservoir (0809), Bardwell Reservoir (0815), Cedar Creek Reservoir (0818), Lewisville Lake (0823), Grapevine Lake (0826), White Rock Lake (0827), Benbrook Lake (0830), Richland-Chambers Reservoir (0836), Lake Conroe (1012), Whitney Lake (1203), Lake Granbury (1205), Millers Creek Reservoir (1208), Somerville Lake (1212), Proctor Lake (1222), Waco Lake (1225), Lake Sweetwater (1237), Granger Lake (1247), Lake Limestone (1252), Aquilla Reservoir (1254), Lake Colorado City (1412), Brady Creek Reservoir (1416), Twin Buttes Reservoir (1423), O.C. Fisher Lake (1425), Lake Corpus Christi (2013), Red Bluff Reservoir (2312), and Cox Lake (2454). All proposed removals of numeric nutrient criteria are due to the EPA disapproval of the revised criteria in the 2010 Texas Surface Water Quality Standards in an action letter dated July 2, 2013.

Proposed revisions to Appendix G include changing the presumed primary contact recreation use with corresponding criteria of 126 colonies per 100 mL to a secondary contact recreation 1 use with corresponding criteria of 630 colonies per 100 mL for three unclassified water bodies in the Trinity River Basin and five unclassified water bodies in the Brazos River Basin. Proposed changes are based on the results from recreational UAAs.

Other proposed changes to Appendix G include changing the presumed primary contact recreation use with corresponding criteria of 126 colonies per 100 mL to a secondary contact recreation 2 use with corresponding criteria of 1,030 colonies per 100 mL for three unclassified water bodies in the Brazos River Basin. Proposed changes are based on the results from recreational UAAs.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications for the commission are anticipated as a result of administration or enforcement of the proposed rules. Any cost savings that may result from the proposed rules will be reallocated to other activities that improve or maintain water quality as needed. Fiscal implications (costs), which may be significant, are anticipated for some government entities that own and operate wastewater facilities that discharge into Texas water bodies. These entities include state agencies, cities, water districts, utility districts, and river authorities. A relatively small number of government entities that have permits for industrial wastewater discharges may also be affected by the proposed rules.

The proposed rules amend the Texas Surface Water Quality Standards. These standards establish the instream water quality conditions for surface waters in the state. A water quality standard for a specific water body consists of a designated beneficial use and the water quality criterion that is necessary to protect the use. Water quality standards are the basis for establishing discharge limits in wastewater and stormwater discharge permits, setting instream water quality goals for TMDLs, and providing water quality targets to assess water quality. Revisions to the water quality standards are proposed to address new information and studies on the appropriate uses and criteria of individual water bodies, incorporate new scientific data on the effects of specific chemicals and pollutants, and address new provisions in the TWC, federal regulations, and guidance of the EPA. Specifically, the proposed rules would: satisfy the federally mandated triennial review and update of the water quality standards; resolve permit issues for specific water bodies by revising specific water quality standards that incorporate new sampling data and results of recent UAAs; streamline the agency's water quality management program for impaired water bodies by eliminating the need to conduct restorative activities; and make needed administrative changes to improve rule clarity and rule organization.

Proposed revisions include changes to the provisions related to toxics, aquatic life uses, dissolved oxygen criteria, dissolved minerals, pH, temperature, and bacteria criteria in water bodies as well as changes to sole-source designation of surface water supplies. For the proposed statewide human health toxic criteria, none are new, 12 are more stringent than the current standards, and 26 are less stringent. For the proposed site-specific aquatic life uses in §307.10, Appendices A and D, 12 are new, none are more stringent, and two are less stringent. For the proposed site-specific dissolved oxygen criteria in §307.10, Appendices A and D, 24 are new, none are more stringent, and 12 are less stringent. For the proposed site-specific criteria in §307.10, Appendix A for dissolved minerals (chloride, sulfate, and total dissolved solids), pH, and temperature, 15 are new, nine are more stringent, and five are less stringent. For the proposed site-specific toxic criteria in §307.10, Appendix E, six are new, two are more stringent, and none are less stringent. For the proposed site-specific bacteria criteria to protect recreation, 11 are new, none are more stringent, and none are less stringent. For designating sole-source surface drinking water supplies in §307.10, Appendix B, the proposed rules include 30 new additions to the standards and remove 11 water bodies.

No additional costs are anticipated for the TCEQ to implement the revisions to the Texas Surface Water Quality Standards. The revised water quality standards are primarily operational and procedural. The statewide monitoring and assessment of surface water quality data and the review of wastewater permit ap-

plications may need to incorporate numerous changes and additions.

Several of the proposed revisions to the proposed site-specific revisions to criteria for individual water bodies in §307.10 are intended to address inappropriate water quality standards for impaired water bodies. In these cases, the proposed water quality standards can help streamline the water quality management programs of the TCEQ by eliminating the need to conduct restorative activities. Proposed changes could result in the removal of water bodies that may appear on the current §303(d) *List of Impaired Water Bodies.* Proposed changes for dissolved minerals and pH, in conjunction with the creation of a new segment (Rio Grande Below Rio Conchos - Segment 2315) and its site-specific dissolved mineral criteria, would remove 41 impairments from the list. Changes to designate site-specific contact recreation criteria would remove 11 impairments. Removal of water bodies listed for dissolved oxygen and aquatic life impairments would eliminate the need to conduct 20 TMDL studies. As a result of the proposed changes, the agency expects that it could reallocate its resources for other water quality management activities and initiatives.

State Government

No additional costs have been identified to other state agencies as a result of the proposed standards. Any potential cost increases would primarily be for certain units of state governments that own and operate wastewater facilities to perform additional monitoring and reporting. These entities may also be required to upgrade their facilities. These upgrades may range from making changes to treatment processes to the renovation or construction of new wastewater treatment facilities. State agencies that operate permitted domestic wastewater discharges include the Texas Department of Criminal Justice, Texas Parks and Wildlife Department, the Texas Department of Transportation, and certain state universities and schools. Domestic wastewater permits are primarily affected by the applicable dissolved oxygen criteria in the proposed standards.

In addition, the water quality standards have indirect effects on the operation of environmental programs of other state agencies. The Texas State Soil and Water Conservation Board coordinates non-point source programs and watershed plans related to agriculture under the Clean Water Act, §319, and the location of watershed plans is affected in part by whether a water body is considered to be meeting water quality standards. Changes to the water quality standards may result in some water bodies being added or removed from the current §303(d) *List of Impaired Water Bodies* and thus affect priorities for watershed plans. The Texas Water Development Board administers loans for wastewater treatment plant construction under Title 2 of the Clean Water Act, and the water quality standards for dissolved oxygen have a bearing on the level of wastewater treatment needed and therefore on the appropriate amount and priority of a loan. The proposed changes to site-specific water quality standards for dissolved oxygen can increase or decrease the required treatment levels. In rare instances, numerical toxic criteria can affect domestic wastewater permits of state agencies, but the number of affected permits cannot be predicted.

Local Government

Local governments with permitted discharges of domestic wastewater include cities, water districts, utility districts, and river authorities. A relatively small number of government entities have permits for industrial wastewater discharges, and these permits are primarily for discharges related to public electrical generating facilities or discharges related to salt reduction at public drinking water treatment plants.

There are approximately 2,011 domestic discharge facilities with Texas Pollutant Discharge Elimination System permits. An estimated 1,455 permittees are government entities. Permits are issued for up to a five-year period, so approximately 291 of the permits to governmental entities are reissued each year. There are approximately 20 wastewater permits associated with electrical generation by governmental entities and approximately 22 industrial wastewater permits for saline discharges associated with drinking water treatment facilities that are operated by governmental entities.

The proposed amendments have cost implications associated with revised criteria for toxic substances to protect human health, revised criteria for recreational uses, and revised dissolved oxygen criteria and aquatic life uses for classified and unclassified water bodies. These cost implications are generally associated with chemical screening and monitoring and with the additional treatment of wastewater that may be needed to meet the standards for water quality. Dischargers may have to change or employ new wastewater treatment methods or techniques in order to meet the proposed standards. These changes may range from developing new wastewater processes to building new wastewater treatment facilities.

The proposed changes in dissolved oxygen criteria are anticipated to affect some local governments that operate domestic wastewater facilities. In the absence of site-specific information, unclassified perennial water bodies are assigned a presumed high aquatic life use and associated dissolved oxygen criteria. None of the proposed revisions for dissolved oxygen criteria for classified or unclassified water bodies are anticipated to require more stringent treatment by domestic wastewater facilities. However, proposed changes for dissolved oxygen criteria for 12 classified or unclassified water bodies are less stringent and could facilitate future facility expansion for governmental entities. There are approximately 12 governmental domestic and two governmental industrial permitted wastewater dischargers on classified and unclassified segments that could be aided by the proposed less stringent revisions.

Public Benefits and Costs

Ms. Chamness has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes in the proposed rules will be continued protection of public drinking water supplies and aquatic life resources, an improved regulatory process for permitted wastewater discharges, and improved quality of the surface water resources of the state.

On a state-wide basis, wastewater discharge facilities monitor toxic substances to protect human health. There are approximately 599 wastewater permits for industrial facilities in Texas (including power plants, petrochemical facilities, mining operations, etc.). When applying for permit renewals or amendments, industrial facilities provide substantial sampling data on a broad range of toxic pollutants that are potentially in their effluents. The screening data are evaluated to ensure compliance with the toxic criteria in the water quality standards and to determine whether additional permit limits or monitoring requirements may be required.

In the proposed rules, no new statewide human health toxic criteria are added, 12 toxic criteria become more stringent, 26 be-

come less stringent, and 246 remain unchanged. Some industrial facilities with wastewater discharges may experience fiscal implications due to changes in the statewide toxic criteria. In general, any costs associated with compliance to the proposed toxic standards will be determined by the size and current condition of a treatment facility, the extent of current controls, and the nature of the wastewater and receiving waters. Because of the variability in receiving waters, the number of toxic substances, and the current condition of treatment facilities, an engineering study and design may be required to determine the extent of any facility or process changes that might be required in order to comply with the proposed rules. This variability precludes calculation of specific costs associated with achieving proposed standards for toxic substances. However, the six proposed changes in site-specific metals criteria in §307.10, Appendix E are expected to avoid the imposition of inappropriately stringent criteria for a minimum of four industrial discharge permits.

There are approximately 556 wastewater permits for domestic facilities owned or operated by businesses statewide. Businesses and individuals served by municipal or commercial wastewater facilities may indirectly incur increased service rates from local governments or other operators of treatment facilities that must recover increased wastewater treatment costs from their customers. The extent of any increased costs would be determined by the individual facility characteristics and rates.

Small Business and Micro Business Assessment

Adverse fiscal implications may be anticipated for some municipal or commercial wastewater facilities that are small or micro-businesses as a result of the proposed rules although no specific small businesses have been identified. There may also be cost savings for some municipal or commercial wastewater facilities, as the proposed amendments include various criteria changes that will result in both increases and decreases in permit limits.

At this time, it is not known how many of the approximately 599 wastewater permits for industrial facilities or approximately 556 wastewater permits for domestic facilities would be classified as small or micro-businesses. The proposed amendments have cost implications associated with revised criteria for toxic substances to protect human health, revised criteria for recreational uses, and revised dissolved oxygen criteria and aquatic life use for classified and unclassified water bodies. Dischargers may have to change or employ new wastewater treatment methods or techniques in order to meet the proposed standards. These changes may range from developing new wastewater processes to building new wastewater treatment facilities.

It is also anticipated that the majority of facilities affected by the proposed rules would be industrial facilities. Any costs associated with compliance to toxic standards will be determined by the size and current condition of a treatment facility, the extent of current controls, and the nature of the wastewater and receiving waters. Because of the variability in receiving waters, the number of toxic substances, and the current condition of treatment facilities, an engineering study and design may be required to determine the extent of any facility or process changes that may be required in order to comply with the proposed requirements. This variability precludes calculation of specific costs associated with achieving proposed standards for toxic substances.

Major municipal wastewater treatment systems are required by the TCEQ and the EPA to establish programs that specify effluent requirements for small industries and businesses that discharge to city sewer collection systems. The levels of treatment required for these dischargers to sewer collection systems are affected by the toxic criteria in the water quality standards since the standards determine the effluent limits for a wastewater discharge. Because of the variability in treatment costs and the variability in facility characteristics and rates, the costs to customers are virtually impossible to estimate for the regulated community. However, given the limited impact of the proposed amendments, if facility upgrade costs are capitalized and annualized, the effect on ratepayers should be minimal if the customer base is of a moderate size.

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 rules are necessary to protect the health, safety, and environmental and economic welfare of the state. The proposed rules are anticipated to continue protection of public drinking water supplies and aquatic life resources, improve the regulatory process for permitted wastewater discharges, and improve the quality of the surface water resources of the state.

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 rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rule changes are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria for a "major environmental rule" as defined in the statute.

A "major environmental rule" is defined in Texas Government Code, §2001.0225(a) as applying to rules adopted by a state agency that: 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 amendments were developed in order to be consistent with the water quality standard rules in the Clean Water Act and the TWC. The amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of the National Pollutant Discharge Elimination System delegation memorandum of agreement between the TCEQ and the EPA. The amendments were not developed solely under the general powers of the agency, but were specifically developed to meet water quality standards established under federal and state law. In addition, the standards are under authority of the TWC, which authorizes the commission to set water quality standards by rule. The TWC directs the TCEQ to consider the existence and effects of nonpoint source pollution, toxic materials, and nutrient loading in developing water quality standards. Therefore, the rulemaking is not subject to

the regulatory analysis provisions in Texas Government Code, §2001.0225(b).

The commission invites public comment on the draft regulatory impact analysis. Written comments 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 prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The Texas Surface Water Quality Standards establishes instream water quality standards for Texas streams, rivers, lakes, estuaries, and other water bodies such as wetlands. The commission is required to establish water quality standards in TWC, §26.023. The Clean Water Act, §303 requires states to publicly review and revise their surface water quality standards every three years. The revisions will satisfy the federal requirement for a triennial review.

These proposed revised criteria are protective of human health and provide a public benefit. The specific purpose of the rule changes are to satisfy state and federal statutory requirements in TWC, §26.023 and Clean Water Act, §303(d), respectively. The proposed revisions more accurately assess water quality in the state and revise requirements to protect human health and water quality. The proposed rules would substantially advance this stated purpose by adopting revised water quality criteria and requirements that are supported by site-specific studies, federal and state research, and statewide monitoring and sampling data. Promulgation and enforcement of these rules will not burden private real property that is the subject of the rules because the amendments revising the state's surface water quality standards do not limit or restrict a person's rights in private real property.

The commission invites public comment on the draft takings impact assessment. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include protecting, preserving, restoring and enhancing the diversity, quality, quantity and functions, and values of coastal natural resources by establishing standards and criteria for instream water quality for Texas streams, rivers, lakes, estuaries, and other water bodies such as wetlands. These proposed water quality standards and criteria will provide parameters for permitted discharges that will protect, preserve, restore and enhance the quality, functions and values of coastal natural resources.

CMP policies applicable to the proposed rules include 30 TAC §501.21. The proposed rulemaking will require wastewater discharge permit applicants to provide information and monitoring data to the commission so that the commission may make an informed decision in authorizing a discharge permit and ensuring that the authorized activities in a wastewater discharge permit comply with all applicable requirements, thus making the rulemaking consistent with the administrative policies of the CMP.

The proposed rulemaking considers information gathered through the biennial assessments of water quality in the commission's Water Quality Inventory to prioritize those coastal waters for studies and analysis in reviewing and revising the state's surface water quality standards. The standards are established to protect designated uses of coastal waters, including protection of uses for recreational purposes and propagation and protection of terrestrial and aquatic life. The proposed rulemaking is consistent with the CMP's policies for discharges of municipal and industrial wastewater to coastal waters and how they relate to specific activities and coastal natural resource areas.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

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.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on October 17, 2013 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Michael Parrish, 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 2012-001-307-OW. The comment period closes at midnight on October 24, 2013. Copies of the proposed rulemaking 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 Debbie Miller, Monitoring and Assessment Section, at (512) 239-1703.

STATUTORY AUTHORITY

These amendments are proposed under the Texas Water Code (TWC), §26.023, that provides the Texas Commission on Environmental Quality with the authority to make rules setting Texas Surface Water Quality Standards (TSWQS) for all waters in the state. These amendments are also being proposed under TWC,

§5.103, that authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state. The proposed amendments will satisfy the provision in Federal Clean Water Act, §303 that requires states to adopt water quality standards and to review and revise standards from time to time, but at least once each three-year period. The revisions to the TSWQS are adopted to incorporate new information and studies on the appropriate uses and criteria of individual water bodies, to incorporate new scientific data on the effects of specific chemicals and pollutants, and to address new provisions in the TWC, federal regulations, and guidance of the EPA.

These amendments implement the TWC, §§5.103, 26.003, 26.023, and 26.026 in addition to the Federal Clean Water Act, §303 (33 United States Code, §1313).

§307.2. Description of Standards.

(a) Contents of the Texas Surface Water Quality Standards.

(1) Section 307.1 of this title (relating to General Policy Statement) contains the general standards policy of the commission.

(2) This section lists the major sections of the standards, defines basin classification categories, describes justifications for standards modifications, and provides the effective dates of the rules.

(3) Section 307.3 of this title (relating to Definitions and Abbreviations) defines terms and abbreviations used in the standards.

(4) Section 307.4 of this title (relating to General Criteria) lists the general criteria that are applicable to all surface waters of the state unless specifically excepted in §307.8 of this title (relating to Application of Standards) or §307.9 of this title (relating to Determination of Standards Attainment).

(5) Section 307.5 of this title (relating to Antidegradation) describes the antidegradation policy and implementation procedures.

(6) Section 307.6 of this title (relating to Toxic Materials) establishes criteria and control procedures for specific toxic substances and total toxicity.

(7) Section 307.7 of this title (relating to Site-Specific Uses and Criteria) defines appropriate water uses and supporting criteria for site-specific standards.

(8) Section 307.8 of this title (relating to the Application of Standards) sets forth conditions when portions of the standards do not apply - such as in mixing zones or below critical low-flows.

(9) Section 307.9 of this title describes sampling and analytical procedures to determine standards attainment.

(10) Section 307.10 of this title (relating to Appendices A - G) lists site-specific standards and supporting information for classified segments (Appendices A and C), water bodies that are sole-source surface drinking water supplies (Appendix B), site-specific uses and criteria for unclassified water bodies (Appendix D), site-specific toxic criteria that may be derived for any water in the state (Appendix E), chlorophyll *a* criteria for selected reservoirs (Appendix F), and site-specific recreational uses and criteria for unclassified water bodies (Appendix G). Specific appendices are as follows:

(A) Appendix A - Site-specific Uses and Criteria for Classified Segments;

(B) Appendix B - Sole-source Surface Drinking Water Supplies;

(C) Appendix C - Segment Descriptions;

(D) Appendix D - Site-specific Uses and Criteria for Unclassified Water Bodies;

(E) Appendix E - Site-specific Toxic Criteria;

(F) Appendix F - Site-specific Nutrient Criteria for Selected Reservoirs; and

(G) Appendix G - Site-specific Recreational Uses and Criteria for Unclassified Water Bodies.

(b) Applicability. The Texas Surface Water Quality Standards apply to surface waters in the state - including wetlands.

(c) Classification of surface waters. The major surface waters of the state are classified as segments for purposes of water quality management and designation of site-specific standards. Classified segments are aggregated by basin, and basins are categorized as follows:

(1) River basin waters. Surface inland waters comprising the major rivers and their tributaries, including listed impounded waters and the tidal portion of rivers to the extent that they are confined in channels.

(2) Coastal basin waters. Surface inland waters, including listed impounded waters but exclusive of paragraph (1) of this subsection, discharging, flowing, or otherwise communicating with bays or the gulf, including the tidal portion of streams to the extent that they are confined in channels.

(3) Bay waters. All tidal waters, exclusive of those included in river basin waters, coastal basin waters, and gulf waters.

(4) Gulf waters. Waters that are not included in or do not form a part of any bay or estuary but that are a part of the open waters of the Gulf of Mexico to the limit of the state's jurisdiction.

(d) Modification of standards.

(1) The commission reserves the right to amend these standards following the completion of special studies.

(2) Any errors in water quality standards resulting from clerical errors or errors in data may be corrected by the commission through amendment of the affected standards. Water quality standards not affected by such clerical errors or errors in data remain valid until changed by the commission.

(3) The narrative provisions, presumed uses, designated uses, and numerical criteria of the Texas Surface Water Quality Standards may be amended for a specific water body to account for local conditions. A site-specific standard is an explicit amendment to this title, Chapter 307 (Texas Surface Water Quality Standards), and adoption of a site-specific standard requires the procedures for public notice and hearing established under the Texas Water Code, §26.024 and §26.025. An amendment that establishes a site-specific standard requires a use-attainability analysis that demonstrates that reasonably attainable water-quality related uses are protected. Upon adoption, site-specific amendments to the standards will be listed in §307.10 of this title.

(4) Factors that may justify the development of site-specific standards are described in §§307.4, 307.6, 307.7, and 307.8 of this title.

(5) Temporary variance. When scientific information indicates that a site-specific standards amendment is justified, the commission may allow a corresponding temporary variance to the water quality standards in a permit for a discharge of wastewater or stormwater [~~storm water~~].

(A) A temporary variance is only applicable to an existing permitted discharge.

(B) A permittee may apply for a temporary variance prior to or during the permit application process. The temporary variance request must be included in a public notice during the permit application process. An opportunity for public comment is provided, and the request may be considered in any public hearing on the permit application.

(C) A temporary variance for a Texas Pollutant Discharge Elimination System permit also requires review and approval by the United States Environmental Protection Agency (EPA) during the permitting process.

(D) The permit must contain effluent limitations that protect existing uses and preclude degradation of existing water quality, and the term of the permit must not exceed three years. Effluent limitations that are needed to meet the existing standards are listed in the permit and are effective immediately as final permit effluent limitations in the succeeding permit, unless the permittee fulfills the requirements of the conditions for the variance in the permit.

(E) When the permittee has complied with the terms of the conditions in the temporary variance, then the succeeding permit may include a permit schedule to meet standards in accordance with subsection (f) of this section. The succeeding permit may also extend the temporary variance in accordance with subsection (f) of this section in order to allow additional time for a site-specific standard to be adopted in this title. This extension can be approved by the commission only after a site-specific study that supports a standards change is completed and the commission agrees the completed study supports a change in the applicable standard(s).

(F) Site-specific standards that are developed under a temporary variance must be expeditiously proposed and publicly considered for adoption at the earliest opportunity.

(e) Standards implementation procedures. Provisions for implementing the water quality standards are described in a document entitled *Procedures to Implement the Texas Surface Water Quality Standards* (RG-194) as amended and approved by the Texas Commission on Environmental Quality and EPA.

(f) Permit schedules to meet standards. Upon permit amendment or permit renewal, the commission may establish interim effluent limitations to allow a permittee time to modify effluent quality in order to attain final effluent limitations. The duration of any interim effluent limitations may not be longer than three years from the effective date of the permit issuance, except in accordance with a temporary variance as described in subsection (d)(5) of this section.

(g) Temporary standards. Where a criterion is not attained and cannot be attained for one or more of the reasons listed in 40 Code of Federal Regulations (CFR) §131.10(g), then a temporary standard for specific water bodies may be adopted in §307.10 of this title as an alternative to changing uses. A criterion that is established as a temporary standard must be adopted in accordance with the provisions of subsection (d)(3) of this section. Specific reasons and additional procedures for justifying a temporary standard are provided in the standards implementation procedures. A temporary standard must identify the water body or water bodies where the criterion applies. A temporary standard identifies the numerical criteria that apply during the existence of the temporary standard. A temporary standard does not exempt any discharge from compliance with applicable technology-based effluent limits. A temporary standard expires no later than the completion of the next triennial revision of the Texas Surface Water Quality Standards. When a temporary standard expires, subsequent discharge permits are issued to meet the applicable existing water quality standards. If a temporary standard is sufficiently justified in accordance with the provisions of subsection (d)(3) of this section, it can be renewed during revisions of the Texas Surface Water Quality Standards. A temporary standard cannot be established that would impair an existing use.

(h) Effective date of standards. Except as provided in 40 CFR §131.21 (EPA review and approval of water quality standards), these rules become effective 20 days after the date they are filed in the office of the secretary of state. As to actions covered by 40 CFR §131.21, the rules become effective upon approval by EPA.

(i) Effect of conflict or invalidity of rule.

(1) If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the provisions contained in this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(2) To the extent of any irreconcilable conflict between provisions of this chapter and other rules of the commission, the provisions of this chapter supersede.

§307.3. Definitions and Abbreviations.

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

(1) Acute toxicity--Toxicity that exerts a stimulus severe enough to rapidly induce an effect. The duration of exposure applicable to acute toxicity is typically 96 hours or less. Tests of total toxicity normally use lethality as the measure of acute impacts. (Direct thermal impacts are excluded from definitions of toxicity.)

(2) Ambient--Refers to the existing water quality in a particular water body.

(3) Aquatic vegetation--Refers to aquatic organisms, i.e., plant life, found in the water and includes phytoplankton; algae, both attached and floating; and vascular and nonvascular plants, both rooted and floating.

(4) Attainable use--A use that can be reasonably achieved by a water body in accordance with its physical, biological, and chemical characteristics whether it is currently meeting that use or not. Guidelines for the determination and review of attainable uses are provided in the standards implementation procedures. The designated use, existing use, or presumed use of a water body may not necessarily be the attainable use.

(5) Background--Refers to the water quality in a particular water body that would occur if that water body were relatively unaffected by human activities.

(6) Bedslope--Stream gradient, or the extent of the drop in elevation encountered as the stream flows downhill. One measure of bedslope is the elevation decline in meters over the stream distance in kilometers.

(7) Best management practices--Schedules of activities, maintenance procedures, and other management practices to prevent or reduce the pollution of water in the state from point and nonpoint sources, to the maximum extent practicable. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(8) Bioaccumulative--Describes a chemical that is taken up by aquatic organisms from water directly or through the consumption of food containing the chemical.

(9) Bioconcentration factor--A unitless value describing the degree to which a chemical can be concentrated in the tissues of an organism in the aquatic environment and that is absorbed directly from the water. The bioconcentration factor is the ratio of a chemical's concentration in the tissue of an organism compared to that chemical's average concentration in the surrounding water.

(10) Biological integrity--The species composition, diversity, and functional organization of a community of organisms in an environment relatively unaffected by pollution.

(11) Biotic ligand model--A metal bioavailability model that uses receiving water body characteristics to develop site-specific water quality criteria.

(12) [~~(11)~~] Chronic toxicity--Toxicity that continues for a long-term period after exposure to toxic substances. Chronic exposure produces sub-lethal effects, such as growth impairment and reduced reproductive success, but it may also produce lethality. The duration of exposure applicable to the most common chronic toxicity test is seven days or more.

(13) [~~(12)~~] Classified--Refers to a water body that is listed and described in Appendix A and Appendix C in §307.10 of this title (relating to Appendices A - G). Site-specific uses and criteria for classified water bodies are listed in Appendix A.

(14) [~~(13)~~] Commission--Texas Commission on Environmental Quality.

(15) [~~(14)~~] Criteria--Water quality conditions that are to be met in order to support and protect desired uses, i.e., existing, designated, attainable, and presumed uses.

(16) [~~(15)~~] Critical low-flow--Low-flow condition that consists of the seven-day, two-year low-flow (7Q2 flow) or the alternative low-flows for spring-fed streams as discussed in §307.8(a)(2) of this title (relating to Application of Standards) and below which some standards do not apply.

(17) [~~(16)~~] Designated use--A use that is assigned to specific water bodies in Appendix A, Appendix D, or Appendix G in §307.10 of this title. Typical uses that may be designated for specific water bodies include domestic water supply, categories of aquatic life use, recreation categories, and aquifer protection.

(18) [~~(17)~~] Discharge permit--A permit issued by the state or a federal agency to discharge treated effluent or cooling water into waters of the state.

(19) [~~(18)~~] Dry weather flows--Sustained or typical dry, warm-weather flows between rainfall events, excluding unusual antecedent conditions of drought or wet weather.

(20) [~~(19)~~] EC_{50}--The concentration of a toxicant that produces an adverse effect on 50% of the organisms tested in a specified time period.

(21) [~~(20)~~] *E. coli--Escherichia coli,* a subgroup of fecal coliform bacteria that is present in the intestinal tracts and feces of warm-blooded animals. It is used as an indicator of the potential presence of pathogens.

(22) [~~(21)~~] Effluent--Wastewater discharged from any point source prior to entering a water body.

(23) [~~(22)~~] Enterococci--A subgroup of fecal streptococci bacteria (mainly *Streptococcus faecalis* and *Streptococcus faecium)* that is present in the intestinal tracts and feces of warm-blooded animals. It is used as an indicator of the potential presence of pathogens.

(24) [~~(23)~~] Epilimnion--The upper mixed layer of a lake (including impoundments, ponds, and reservoirs).

(25) [~~(24)~~] Existing use--A use that is currently being supported by a specific water body or that was attained on or after November 28, 1975.

(26) [~~(25)~~] Fecal coliform--A portion of the coliform bacteria group that is present in the intestinal tracts and feces of warm-blooded animals; heat tolerant bacteria from other sources can sometimes be included. It is used as an indicator of the potential presence of pathogens.

(27) [~~(26)~~] Freshwaters--Inland waters that exhibit no measurable elevation changes due to normal tides.

(28) [~~(27)~~] Halocline--A vertical gradient in salinity under conditions of density stratification that is usually recognized as the point where salinity exhibits the greatest difference in the vertical direction.

(29) [~~(28)~~] Harmonic mean flow--A measure of mean flow in a water course that is calculated by summing the reciprocals of the individual flow measurements, dividing this sum by the number of measurements, and then calculating the reciprocal of the resulting number.

(30) [~~(29)~~] Incidental fishery--A level of fishery that applies to water bodies that are not considered to have a sustainable fishery but that have an aquatic life use of limited, intermediate, high, or exceptional.

(31) [~~(30)~~] Industrial cooling impoundment--An impoundment that is owned or operated by, or in conjunction with, the water rights permittee, and that is designed and constructed for the primary purpose of reducing the temperature and removing heat from an industrial effluent.

(32) Industrial cooling water area--A designated area associated with a permitted wastewater discharge where numerical temperature criteria are not applicable in accordance with conditions and requirements specified in §307.4(f) of this title (relating to General Criteria).

(33) [~~(31)~~] Intermittent stream--A stream that has a period of zero flow for at least one week during most years. Where flow records are available, a stream with a 7Q2 flow of less than 0.1 cubic feet per second is considered intermittent.

(34) [~~(32)~~] Intermittent stream with perennial pools--An intermittent stream that maintains persistent pools even when flow in the stream is less than 0.1 cubic feet per second.

(35) [~~(33)~~] LC_{50}--The concentration of a toxicant that is lethal (fatal) to 50% of the organisms tested in a specified time period.

(36) [~~(34)~~] Main pool station--A monitoring station that is located in the main body of a reservoir near the dam and not located in a cove or in the riverine portion or transition zone of a reservoir.

(37) [~~(35)~~] Method detection limit--The minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte. The method detection limit (MDL) is estimated in accordance with 40 Code of Federal Regulations Part 136, Appendix B.

(38) [~~(36)~~] Minimum analytical level--The lowest concentration that a particular substance can be quantitatively measured with a defined accuracy and precision level using approved analytical methods. The minimum analytical level is not the published MDL for a United States Environmental Protection Agency (EPA)-approved an-

alytical method that is based on laboratory analysis of the substance in reagent (distilled) water. The minimum analytical level is based on analyses of the analyte in the matrix of concern (e.g., wastewater effluents). The commission establishes general minimum analytical levels that are applicable when information on matrix-specific minimum analytical levels is unavailable.

(39) [~~(37)~~] Mixing zone--The area contiguous to a permitted discharge where mixing with receiving waters takes place and where specified criteria, as listed in §307.8(b)(1) of this title, can be exceeded. Acute toxicity to aquatic organisms is not allowed in a mixing zone, and chronic toxicity to aquatic organisms is not allowed beyond a mixing zone.

(40) [~~(38)~~] Noncontact recreation--Activities that do not involve a significant risk of water ingestion, such as those with limited body contact incidental to shoreline activity, including birding, hiking, and biking. Noncontact recreation use may also be assigned where primary and secondary contact recreation activities should not occur because of unsafe conditions, such as ship and barge traffic.

(41) [~~(39)~~] Nonpersistent--Describes a toxic substance that readily degrades in the aquatic environment, exhibits a half-life of less than 60 days, and does not have a tendency to accumulate in organisms.

(42) [~~(40)~~] Nutrient criteria--Numeric and narrative criteria that are established to protect surface waters from excessive growth of aquatic vegetation. Nutrient numeric criteria for reservoirs are expressed in terms of chlorophyll *a* concentration per unit volume as a measure of phytoplankton density.

(43) [~~(41)~~] Nutrient--A chemical constituent, most commonly a form of nitrogen or phosphorus, that in excess can contribute to the undesirable growth of aquatic vegetation and impact uses as defined in this title.

(44) [~~(42)~~] Oyster waters--Waters producing edible species of clams, oysters, or mussels.

(45) [~~(43)~~] Persistent--Describes a toxic substance that is not readily degraded and exhibits a half-life of 60 days or more in an aquatic environment.

(46) [~~(44)~~] Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(47) [~~(45)~~] Point source--Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

(48) [~~(46)~~] Presumed use--A use that is assigned to generic categories of water bodies (such as perennial streams). Presumed uses are superseded by designated uses for individual water bodies in Appendix A, Appendix D, or Appendix G of §307.10 of this title.

(49) [~~(47)~~] Primary contact recreation 1--Activities that are presumed to involve a significant risk of ingestion of water (e.g., wading by children, swimming, water skiing, diving, tubing, surfing, handfishing as defined by Texas Parks and Wildlife Code, §66.115, and the following whitewater activities: kayaking, canoeing, and rafting).

(50) Primary contact recreation 2--Water recreation activities, such as wading by children, swimming, water skiing, diving, tubing, surfing, handfishing as defined by Texas Parks and Wildlife Code, §66.115, and whitewater kayaking, canoeing, and rafting, that involve a significant risk of ingestion of water but that occur less frequently than for primary contact recreation 1 due to:

(A) physical characteristics of the water body; or

(B) limited public access.

(51) [~~(48)~~] Protection zone--Any area within the watershed of a sole-source surface drinking water supply that is:

(A) within two miles of the normal pool elevation of a body of surface water that is a sole-source surface drinking water supply;

(B) within two miles of that part of a perennial stream that is:

(i) a tributary of a sole-source surface drinking water supply; and

(ii) within three linear miles upstream of the normal pool elevation of a sole-source surface drinking water supply; or

(C) within two miles of that part of a stream that is a sole-source surface drinking water supply, extending three linear miles upstream from the water supply intake (Texas Water Code, §26.0286).

(52) [~~(49)~~] Public drinking water supply--A water body designated to provide water to a public water system as defined in Chapter 290 of this title (relating to Public Drinking Water).

(53) [~~(50)~~] Saltwater--A coastal water that has a measurable elevation change due to normal tides. In the absence of tidal information, saltwater is generally considered to be a coastal water that typically has a salinity of two parts per thousand or greater in a significant portion of the water column.

(54) [~~(51)~~] Salinity--The total dissolved solids in water after all carbonates have been converted to oxides, all bromide and iodide have been replaced by chloride, and all organic matter has been oxidized. For most purposes, salinity is considered equivalent to total dissolved salt content. Salinity is usually expressed in parts per thousand.

(55) [~~(52)~~] Seagrass propagation--A water-quality-related existing use that applies to saltwater with significant stands of submerged seagrass.

(56) [~~(53)~~] Secondary contact recreation 1--Activities that commonly occur but have limited body contact incidental to shoreline activity (e.g. fishing, canoeing, kayaking, rafting, and motor boating). These activities are presumed to pose a less significant risk of water ingestion than primary contact recreation 1 or 2 but more than secondary contact recreation 2.

(57) [~~(54)~~] Secondary contact recreation 2--Activities with limited body contact incidental to shoreline activity (e.g. fishing, canoeing, kayaking, rafting, and motor boating) that are presumed to pose a less significant risk of water ingestion than secondary contact recreation 1. These activities occur less frequently than secondary contact recreation 1 due to physical characteristics of the water body or limited public access.

(58) [~~(55)~~] Segment--A water body or portion of a water body that is individually defined and classified in Appendices A and C of §307.10 of this title in the Texas Surface Water Quality Standards. A segment is intended to have relatively homogeneous chemical, physical, and hydrological characteristics. A segment provides a basic unit for assigning site-specific standards and for applying water

quality management programs of the agency. Classified segments may include streams, rivers, bays, estuaries, wetlands, lakes, or reservoirs.

(59) [~~(56)~~] Settleable solids--The volume or weight of material that settles out of a water sample in a specified period of time.

(60) [~~(57)~~] Seven-day, two-year low-flow (7Q2)--The lowest average stream flow for seven consecutive days with a recurrence interval of two years, as statistically determined from historical data. As specified in §307.8 of this title, some water quality standards do not apply at stream flows that are less than the 7Q2 flow.

(61) [~~(58)~~] Shellfish--Clams, oysters, mussels, crabs, crayfish, lobsters, and shrimp.

(62) [~~(59)~~] Sole-source surface drinking water supply--A body of surface water that is identified as a public water supply in rules adopted by the commission under Texas Water Code, §26.023 and is the sole source of supply of a public water supply system, exclusive of emergency water connections (Texas Water Code, §26.0286).

(63) [~~(60)~~] Standard Methods for the Examination of Water and Wastewater--A document describing sampling and analytical procedures that is published by the American Public Health Association, American Water Works Association, and Water Environment Federation. The most recent edition of this document is to be followed whenever its use is specified by these rules.

(64) [~~(61)~~] Standards--Desirable uses (i.e., existing, attainable, designated, or presumed uses as defined in this title) and the narrative and numerical criteria deemed necessary to protect those uses in surface waters.

(65) [~~(62)~~] Standards implementation procedures--Methods and protocols in the guidance document *Procedures to Implement the Texas Surface Water Quality Standards* (RG-194), as amended and approved by the commission and EPA.

(66) [~~(63)~~] Stormwater [~~Storm water~~]--Rainfall runoff, snow melt runoff, surface runoff, and drainage.

(67) [~~(64)~~] Stormwater [~~Storm water~~] discharge--A point source discharge that is composed entirely of stormwater [~~storm water~~] associated with an industrial activity, a construction activity, a discharge from a municipal separate storm sewer system, or other discharge designated by the agency.

(68) [~~(65)~~] Stream order--A classification of stream size, where the smallest, unbranched tributaries of a drainage basin are designated first order streams. Where two first order streams join, a second order stream is formed; [~~and~~] where two second order streams join, a third order stream is formed, etc. For purposes of water quality standards application, stream order is determined from United States Geological Survey topographic maps with a scale of 1:24,000.

(69) [~~(66)~~] Surface water in the state--Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state as defined in the Texas Water Code, §26.001, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems that are authorized by state or federal law, regulation, or permit, and that are created for the purpose of waste treatment are not considered to be water in the state.

(70) [~~(67)~~] Sustainable Fisheries--Descriptive of water bodies that potentially have sufficient fish production or fishing activity to create significant long-term human consumption of fish. Sustainable fisheries include perennial streams and rivers with a stream order of three or greater; lakes and reservoirs greater than or equal to 150 acre-feet or 50 surface acres; all bays, estuaries, and tidal rivers. Water bodies that are presumed to have sustainable fisheries include all designated segments listed in Appendix A unless specifically exempted.

(71) [~~(68)~~] Thalweg--The deepest portion of a stream or river channel cross-section.

(72) [~~(69)~~] Tidal--Descriptive of coastal waters that are subject to the ebb and flow of tides. For purposes of standards applicability, tidal waters are considered to be saltwater. Classified tidal waters include all bays and estuaries with a segment number that begins with 24xx, all streams with the word tidal in the segment name, and the Gulf of Mexico.

(73) [~~(70)~~] To discharge--Includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

[~~(71) Total Maximum Daily Load (TMDL)--The total amount of a substance that a water body can assimilate and still meet the Texas Surface Water Quality Standards.~~]

(74) [~~(72)~~] Total dissolved solids--The amount of material (inorganic salts and small amounts of organic material) dissolved in water and commonly expressed as a concentration in terms of milligrams per liter. The term is equivalent to the term filterable residue, as used in 40 Code of Federal Regulations Part 136 and in previous editions of the publication entitled, *Standard Methods for the Examination of Water and Wastewater*.

(75) Total maximum daily load (TMDL)--The total amount of a substance that a water body can assimilate and still meet the Texas Surface Water Quality Standards.

(76) [~~(73)~~] Total suspended solids--Total suspended matter in water, which is commonly expressed as a concentration in terms of milligrams per liter. The term is equivalent to nonfilterable residue, as used in 40 Code of Federal Regulations Part 136 and in previous editions of the publication entitled, *Standard Methods for the Examination of Water and Wastewater*.

(77) [~~(74)~~] Total toxicity--Toxicity as determined by exposing aquatic organisms to samples or dilutions of instream water or treated effluent. Also referred to as whole effluent toxicity or biomonitoring.

(78) [~~(75)~~] Toxic equivalency factor (TEF)--A factor to describe an order-of-magnitude consensus estimate of the toxicity of a compound relative to the toxicity of 2,3,7,8-tetraclorodibenzo-*p*-dioxin (2,3,7,8-TCDD). The factor is applied to transform various concentrations of dioxins and furans or dioxin-like polychlorinated biphenyls (PCBs) into equivalent concentrations of 2,3,7,8-TCDD, expressed as a toxic equivalency (TEQ).

(79) [~~(76)~~] Toxic equivalency (TEQ)--The sum of the products from the concentration of each dioxin and furan, or dioxin-like PCB congener, multiplied by its respective TEF to give a single 2,3,7,8-TCDD equivalent.

(80) [~~(77)~~] Toxicity--The occurrence of adverse effects to living organisms due to exposure to toxic materials. Adverse effects caused by conditions of temperature and dissolved oxygen are excluded from the definition of toxicity. With respect to the provisions of §307.6(e) of this title (relating to Toxic Materials), which concerns total toxicity and biomonitoring requirements, adverse effects caused by concentrations of dissolved salts (such as sodium, potassium, calcium, chloride, carbonate) in source waters are excluded from the

definition of toxicity. Source water is defined as surface water or groundwater that is used as a public water supply or industrial water supply (including a cooling-water supply). Source water does not include brine water that is produced during the extraction of oil and gas, or other sources of brine water that are substantially uncharacteristic of surface waters in the area of discharge. In addition, adverse effects caused by concentrations of dissolved salts that are added to source water by industrial processes are not excluded from the requirements of §307.6(e) of this title, except as specifically noted in §307.6(e)(2)(B) of this title, which concerns requirements for toxicity testing of 100% effluent. This definition of toxicity does not affect the standards for dissolved salts in this chapter other than §307.6(e) of this title. The standards implementation procedures contain provisions to protect surface waters from adverse effects of dissolved salts and methods to address the effects of dissolved salts on total toxicity tests.

(81) [~~(78)~~] Toxicity biomonitoring--The process or act of determining total toxicity. Documents that describe procedures for toxicity biomonitoring are cited in §307.6 of this title. Also referred to simply as biomonitoring.

(82) [~~(79)~~] Water-effect ratio (WER)--The WER is calculated as the toxic concentration (LC_{50}) of a substance in water at a particular site, divided by the toxic concentration of that substance as reported in laboratory dilution water. The WER can be used to establish site-specific acute and chronic criteria to protect aquatic life. The site-specific criterion is equal to the WER times the statewide aquatic life criterion in §307.6(c) of this title.

(83) [~~(80)~~] Water quality management program--The agency's overall program for attaining and maintaining water quality consistent with state standards, as authorized under the Texas Water Code, the Texas Administrative Code, and the Clean Water Act, §§106, 205(j), 208, 303(e) and 314 (33 United States Code, §§1251 *et seq.).*

(84) [~~(81)~~] Wetland--An area (including a swamp, marsh, bog, prairie pothole, or similar area) having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation. The term "hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation. The term "hydrophytic vegetation" means a plant growing in: water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content. The term "wetland" does not include irrigated acreage used as farmland; a man-made wetland of less than one acre; or a man-made wetland where construction or creation commenced on or after August 28, 1989, and that was not constructed with wetland creation as a stated objective, including but not limited to an impoundment made for the purpose of soil and water conservation that has been approved or requested by soil and water conservation districts. If this definition of wetland conflicts with the federal definition in any manner, the federal definition prevails.

(85) [~~(82)~~] Wetland water quality functions--Attributes of wetlands that protect and maintain the quality of water in the state, which include stormwater [~~storm water~~] storage and retention and the moderation of extreme water level fluctuations; shoreline protection against erosion through the dissipation of wave energy and water velocity, and anchoring of sediments; habitat for aquatic life; and removal, transformation, and retention of nutrients and toxic substances.

(86) [~~(83)~~] Zone of initial dilution--The small area at the immediate point of a permitted discharge where initial dilution with receiving waters occurs and that may not meet certain criteria applicable to the receiving water. A zone of initial dilution is substantially smaller than a mixing zone.

(b) Abbreviations. The following abbreviations apply to this chapter:

(1) ALU--aquatic life use.

(2) AP--aquifer protection.

(3) AS--agricultural water supply.

(4) ASTER--Assessment Tools for the Evaluation of Risk.

(5) BCF--bioconcentration factor.

(6) CASRN--Chemical Abstracts Service Registry number.

(7) CFR--Code of Federal Regulations.

(8) cfs--cubic feet per second.

(9) Cl^{-1} --chloride.

(10) CR--county road.

(11) DO--dissolved oxygen.

(12) E--exceptional aquatic life use.

(13) EPA--United States Environmental Protection Agency.

(14) degrees F--Degree(s) Fahrenheit.

(15) FM--Farm to Market Road.

(16) ft^3/s--cubic feet per second.

(17) H--high aquatic life use.

(18) HEAST--Health Effects Assessment Summary Tables.

(19) I--intermediate aquatic life use.

(20) IBWC--International Boundary and Water Commission.

(21) IRIS--Integrated Risk Information System.

(22) IS--industrial water supply.

(23) km--kilometer.

(24) L--limited aquatic life use.

(25) M--minimal aquatic life use.

(26) m--multiplier.

(27) m/km--meters per kilometer.

(28) MCL--maximum contaminant level (for public drinking water supplies).

(29) MDL--method detection limit.

(30) mg/L--milligrams per liter.

(31) mi--mile.

(32) mL [~~ml~~]--milliliter.

(33) N--navigation.

(34) NCR--noncontact recreation.

(35) O--oyster waters.

(36) PCR--primary contact recreation.

(37) PS--public water supply.

(38) RfD--reference dose.

(39) RR--ranch road.

(40) 7Q2--seven-day, two-year low-flow.

(41) SCR--secondary contact recreation.

(42) SH--state highway.

(43) SO_4^{-2}--sulfate.

(44) SU--standard units.

(45) TCEQ--Texas Commission on Environmental Quality.

(46) TDS--total dissolved solids.

(47) TEF--toxic equivalency factor.

(48) TMDL--total maximum daily load.

(49) TPDES--Texas Pollutant Discharge Elimination System.

(50) TRE--toxicity reduction evaluation.

(51) TSS--total suspended solids.

(52) US--United States.

(53) USFDA--United States Food and Drug Administration.

(54) USGS--United States Geological Survey.

(55) WER--Water-effect ratio.

(56) WF--waterfowl habitat.

(57) WQM--water quality management.

(58) µg/L--micrograms per liter.

(59) ZID--zone of initial dilution.

§307.4. General Criteria.

(a) Application. The general criteria set forth in this section apply to surface water in the state and specifically apply to substances attributed to waste discharges or human activities. General criteria do not apply to those instances when surface water, as a result of natural phenomena, exhibit characteristics beyond the limits established by this section. General criteria are superseded by specific exemptions stated in this section or in §307.8 of this title (relating to the Application of Standards), or by site-specific water quality standards for classified segments. Provisions of the general criteria remain in effect in mixing zones or below critical low-flow conditions unless specifically exempted in §307.8 of this title.

(b) Aesthetic parameters.

(1) Concentrations of taste and odor producing substances must not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the waters, or otherwise interfere with the reasonable use of the water in the state.

(2) Surface water must be essentially free of floating debris and suspended solids that are conducive to producing adverse responses in aquatic organisms or putrescible sludge deposits or sediment layers that adversely affect benthic biota or any lawful uses.

(3) Surface waters must be essentially free of settleable solids conducive to changes in flow characteristics of stream channels or the untimely filling of surface water in the state. This provision does not prohibit dredge and fill activities that are permitted in accordance with the Federal Clean Water Act.

(4) Surface waters must be maintained in an aesthetically attractive condition.

(5) Waste discharges must not cause substantial and persistent changes from ambient conditions of turbidity or color.

(6) No foaming or frothing of a persistent nature is permissible.

(7) Surface waters must be maintained so that oil, grease, or related residue do not produce a visible film or sheen of oil or globules of grease on the surface or coat the banks or bottoms of the watercourse; or cause toxicity to man, aquatic life, or terrestrial life in accordance with subsection (d) of this section.

(c) Radiological substances. Radioactive materials must not be discharged in excess of the amount regulated by Chapter 336 of this title (relating to Radioactive Substance Rules).

(d) Toxic substances. Surface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life. Additional requirements and criteria for toxic substances are specified in §307.6 of this title (relating to Toxic Materials). Criteria to protect aquatic life from acute toxicity apply to all surface waters in the state except as specified in §307.8(a)(3) of this title. Criteria to protect aquatic life from chronic toxicity apply to surface waters with an aquatic life use of limited, intermediate, high, or exceptional as designated in §307.10 of this title (relating to Appendices A - G) or as determined on a case-by-case basis in accordance with subsection (l) of this section. Toxic criteria to protect human health for consumption of fish apply to waters with a sustainable or incidental fishery, as described in §307.6(d) of this title. Additional criteria apply to water in the state with a public drinking water supply use, as described in §307.6(d) of this title. The general provisions of this subsection do not change specific provisions in §307.8 of this title for applying toxic criteria.

(e) Nutrients. Nutrients from permitted discharges or other controllable sources must not cause excessive growth of aquatic vegetation that impairs an existing, designated, presumed, or attainable use. Site-specific nutrient criteria, nutrient permit limitations, or separate rules to control nutrients in individual watersheds are established where appropriate after notice and opportunity for public participation and proper hearing. Site-specific numeric criteria related to chlorophyll *a* are listed in Appendix F of §307.10 of this title.

(f) Temperature. Consistent with §307.1 of this title (relating to General Policy Statement) and in accordance with state water rights permits, temperature in industrial cooling [~~lake~~] impoundments, industrial cooling water areas, and all other surface water in the state must be maintained so as to not interfere with the reasonable use of such waters. Numerical temperature criteria have not been specifically established for industrial cooling [~~lake~~] impoundments, which in most areas of the state contribute to water conservation and water quality objectives. In addition, numerical criteria for temperature are not applicable in designated industrial cooling water areas, as defined in §307.3 of this title (relating to Definitions and Abbreviations). The horizontal boundaries of an industrial cooling water area must be defined in the applicable wastewater permit. The following temperature criteria, expressed as a maximum temperature differential (rise over ambient) are established except for industrial cooling impoundments, temperature elevations due to discharges of treated domestic (sanitary) effluent, and temperature elevations within designated mixing zones or industrial cooling water areas. The maximum temperature differentials are:

(1) freshwater streams: 5 degrees Fahrenheit (degrees F);

(2) freshwater lakes and impoundments: 3 degrees F; and

(3) tidal river reaches, bay, and gulf waters: 4 degrees F in fall, winter, and spring, and 1.5 degrees F in summer (June, July, and August).

(4) Additional temperature criteria (expressed as maximum temperatures) for classified segments are specified in Appendix A of §307.10 of this title. These criteria are not applicable within industrial cooling water areas.

(g) Salinity.

(1) Concentrations and the relative ratios of dissolved minerals such as chloride, sulfate [~~chlorides, sulfates~~], and total dissolved solids must be maintained such that existing, designated, presumed, and attainable uses are not impaired.

(2) Criteria for chloride, sulfate, [~~chlorides, sulfates,~~] and total dissolved solids for classified freshwater segments are specified in Appendix A of §307.10 of this title.

(3) Salinity gradients in estuaries must be maintained to support attainable estuarine dependent aquatic life uses. Numerical salinity criteria for Texas estuaries have not been established because of the high natural variability of salinity in estuarine systems, and because long-term studies by state agencies to assess estuarine salinities are still ongoing. Absence of numerical criteria must not preclude evaluations and regulatory actions based on estuarine salinity, and careful consideration must be given to all activities that may detrimentally affect salinity gradients.

(h) Aquatic life uses and dissolved oxygen.

(1) Dissolved oxygen concentrations must be sufficient to support existing, designated, presumed, and attainable aquatic life uses. Aquatic-life use categories and corresponding dissolved oxygen criteria are described in §307.7(b)(3) of this title (relating to Site-Specific Uses and Criteria).

(2) Aquatic life use categories and dissolved oxygen criteria for classified segments are specified in Appendix A of §307.10 of this title. Aquatic life use categories and dissolved oxygen criteria for other specific water bodies are specified in Appendix D of §307.10 of this title. Where justified by sufficient site-specific information, dissolved oxygen criteria that differ from §307.7(b)(3) of this title may be adopted for a particular water body in §307.10 of this title.

(3) Perennial streams, rivers, lakes, bays, estuaries, and other appropriate perennial waters that are not specifically listed in Appendix A or D of §307.10 of this title are presumed to have a high aquatic life use and corresponding dissolved oxygen criteria. Applicable dissolved oxygen criteria are described in §307.7(b)(3)(A) of this title. Higher uses are protected where they are attainable.

(4) When water is present in the streambed of intermittent streams, a 24-hour dissolved oxygen mean of at least 2.0 mg/L and 24-hour minimum dissolved oxygen concentration of 1.5 mg/L must be maintained. Intermittent streams that are not specifically listed in Appendix A or D of §307.10 of this title are considered to have a minimal aquatic life use except as indicated below in this subsection. For intermittent streams with seasonal aquatic life uses, dissolved oxygen concentrations commensurate with the aquatic life uses must be maintained during the seasons when the aquatic life uses occur. Unclassified intermittent streams with perennial pools are presumed to have a limited aquatic life use and corresponding dissolved oxygen criteria. Higher uses are protected where they are attainable.

(i) Aquatic life uses and habitat. Vegetative and physical components of the aquatic environment must be maintained or mitigated to protect aquatic life uses. Procedures to protect habitat in permits for dredge and fill are specified in Federal Clean Water Act, §404 and in Chapter 279 of this title (relating to Water Quality Certification).

(j) Aquatic recreation.

(1) Existing, designated, presumed, and attainable uses of aquatic recreation must be maintained, as determined by criteria that indicate the potential presence of pathogens. Categories of recreation and applicable criteria are established in §307.7(b)(1) of this title.

(2) Recreational use categories and criteria for classified segments are specified in Appendix A of §307.10 of this title. Site-specific recreational use categories and criteria for selected unclassified water bodies are specified in Appendix G of §307.10 of this title. Where justified by sufficient site-specific information, recreational uses and criteria that differ from §307.7(b)(1) of this title may be adopted for a particular water body in §307.10 of this title. For water bodies not specifically listed in Appendix A or Appendix G of §307.10 of this title, the following recreational uses are presumed to apply.

(A) Primary contact recreation 1. Primary contact recreation 1 is presumed for lakes, reservoirs, and tidal water bodies. Primary contact recreation 1 is presumed to apply to intermittent streams, intermittent streams with perennial pools, nontidal wetlands, and perennial freshwater streams and rivers, except where site-specific information indicates that recreational activities that involve a significant risk of ingestion have little to no likelihood of occurring, in accordance with subparagraph (C) [~~(B)~~] of this paragraph.

(B) Primary contact recreation 2. Primary contact recreation 2 applies to water bodies where water recreation activities that involve a significant risk of ingestion of water occur, but less frequently than for primary contact recreation 1 due to:

(i) physical characteristics of the water body; or

(ii) limited public access.

(C) [~~(B)~~] Secondary contact recreation 1. Secondary contact recreation 1 applies to water bodies where water recreation can occur, but the nature of the recreation does not involve a significant risk of ingestion. Secondary contact recreation 1 applies to intermittent and perennial freshwaters where site-specific information demonstrates that primary contact recreation 1 or 2 have [~~has~~] little to no likelihood of occurring. At a minimum, the following characteristics must be demonstrated for a presumed use of secondary contact recreation 1 to apply:

(i) during dry weather flows, the average depth at the thalweg (mid-channel) is less than 0.5 meters and there are not substantial pools with a depth of 1 meter or greater; and

(ii) there are no [~~not~~] existing recreational activities that create a significant risk of ingestion or uses [~~a use~~] for primary contact recreation 1 or 2.

(D) [~~(C)~~] Secondary contact recreation 2. Secondary contact recreation 2 applies to water bodies where water recreation activities do not involve a significant risk of water ingestion and where activities occur less frequently than for secondary contact recreation 1 due to physical characteristics of the water body or limited public access. No water body is presumed to have a use of secondary contact recreation 2. This use is applicable when designated for an individual water body as listed in Appendix A or G in §307.10 of this title.

(E) [~~(D)~~] Noncontact recreation. Noncontact recreation applies to water bodies where recreation activities do not involve a significant risk of water ingestion and where primary and secondary contact recreation uses should not occur because of unsafe conditions.

No water body is presumed to have a use of noncontact recreation. This use is applicable when designated for an individual water body as listed in Appendix A or G in §307.10 of this title.

(3) Assigning recreational uses to an unclassified water body.

(A) Applying presumed uses. Recreational uses and associated numerical criteria are assigned to an unclassified water body in accordance with the presumed uses and guidelines established in paragraph (2) of this subsection. To assign uses other than primary contact recreation 1, a reasonable level of inquiry is conducted to determine if a different presumed use is appropriate for a particular water body. A reasonable level of inquiry includes review of available relevant information or completed site surveys.

(B) Assigning presumed uses. Presumed uses of primary contact recreation 1 and secondary contact recreation 1 can be assigned to an individual water body for regulatory action without individually designating the recreational use and criteria in Appendix G in §307.10 of this title. Regulatory action may include issuing Texas Pollutant Discharge Elimination System permits, revising the list of impaired water bodies under Clean Water Act, §303(d), or setting and implementing a total maximum daily load. The presumed secondary contact recreation 1 use is included in the public notice of a regulatory action that could affect recreational water quality, and the assigned recreational uses are subject to applicable public comment and approval by the United States Environmental Protection Agency (EPA). For tracking purposes, presumed recreational uses that have been determined to be less stringent than primary contact recreation 1 are noted in a publicly available list such as the EPA's Water Quality Standards Repository prior to a water quality standards revision. Presumed uses that have been determined for particular water bodies are listed in Appendix G in §307.10 of this title when the water quality standards are revised.

(C) Assigning a use less stringent than presumed use. A recreational use that is less stringent than the applicable presumed use can only be assigned to an individual water body for a regulatory action after that use is approved by the EPA and designated in Appendix A or G in §307.10 of this title. Support for designating a use less stringent than an applicable presumed use requires a use-attainability analysis (UAA). 40 Code of Federal Regulations §131.1(g) lists six reasons for a change in use in a water body. At least one of these reasons must be included in the UAA.

(k) Antidegradation. Nothing in this section is intended to be construed or otherwise used to supersede the requirements of §307.5 of this title (relating to Antidegradation).

(l) Assessment of unclassified waters for aquatic life uses. Waters that are not specifically listed in Appendices A or D of §307.10 of this title are assigned the specific uses that are attainable or characteristic of those waters. Upon administrative or regulatory action by the commission that affects a particular unclassified water body, the characteristics of the affected water body must be reviewed by the commission to determine which aquatic life uses are appropriate. Additional uses so determined must be indicated in public notices for discharge applications. Uses that are not applicable throughout the year in a particular unclassified water body are assigned and protected for the seasons where such uses are attainable. Initial determinations of use are considered preliminary, and in no way preclude redeterminations of use in public hearings conducted under the provisions of the Texas Water Code. For unclassified waters where the presumed minimum uses or criteria specified in this section are inappropriate, site-specific standards may be developed in accordance with §307.2(d) of this title (relating to Description of Standards). Uses and criteria are assigned in accordance with this section and with §307.7(b)(3) of this title. Procedures for assigning uses and criteria are described in the standards implementation procedures.

(m) pH. Consistent with §307.1 of this title, pH levels in all surface water in the state must be maintained so as to not interfere with the reasonable use of such waters.

§307.6. Toxic Materials.

(a) Application. The toxic criteria set forth in this section apply to surface water in the state and specifically apply to substances attributed to waste discharges or human activity. With the exception of numeric human health criteria, toxic criteria do not apply to those instances where surface water, solely as a result of natural phenomena, exhibit characteristics beyond the limits established by this section. Standards and procedures set forth in this section are applied in accordance with §307.8 of this title (relating to Application of Standards) and §307.9 of this title (relating to Determination of Standards Attainment).

(b) General provisions.

(1) Water in the state must not be acutely toxic to aquatic life in accordance with §307.8 of this title.

(2) Water in the state with designated or existing aquatic life uses of limited or greater must not be chronically toxic to aquatic life, in accordance with §307.8 of this title.

(3) Water in the state must be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water or any combination of the three. Water in the state with sustainable fisheries or public drinking water supply uses must not exceed applicable human health toxic criteria, in accordance with subsection (d) of this section and §307.8 of this title.

(4) Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three.

(c) Specific numerical aquatic life criteria.

(1) Numerical criteria are established in Table 1 of this paragraph for those specific toxic substances where adequate toxicity information is available and that have the potential for exerting adverse impacts on water in the state.
Figure: 30 TAC §307.6(c)(1)
[~~Figure:~~ ~~30 TAC §307.6(c)(1)~~]

(2) Numerical criteria are based on ambient water quality criteria documents published by the United States Environmental Protection Agency (EPA). EPA guidance criteria have been appropriately recalculated to eliminate the effects of toxicity data for aquatic organisms that are not native to Texas, in accordance with procedures in the EPA guidance document entitled *Guidelines for Deriving Numerical Site-specific Water Quality Criteria* (EPA 600/3-84-099) and Appendix B of the EPA draft guidance document entitled *Interim Guidance on the Determination and Use of Water-Effect Ratios for Metals* (EPA-823-B-94-001). Additional EPA guidelines that may be used to establish aquatic life criteria are detailed in the guidance documents.

(3) Specific numerical acute aquatic life criteria are applied as 24-hour averages, and specific numerical chronic aquatic life criteria are applied as seven-day averages.

(4) Ammonia and chlorine toxicity are addressed by total toxicity (biomonitoring) requirements in subsection (e) of this section.

(5) Specific numerical aquatic life criteria for metals and metalloids in Table 1 of paragraph (1) of this subsection apply to dis-

solved concentrations where noted. Dissolved concentrations can be estimated by filtration of samples prior to analysis, or by converting from total recoverable measurements in accordance with procedures approved by the commission in the standards implementation procedures (RG-194) as amended. Specific numerical aquatic life criteria for non-metallic substances in Table 1 of paragraph (1) of this subsection apply to total recoverable concentrations unless otherwise noted.

(6) Specific numerical acute criteria for toxic substances are applicable to all water in the state except for small zones of initial dilution (ZIDs) at discharge points. Acute criteria may be exceeded within a ZID and below extremely low streamflow conditions (one-fourth of critical low-flow conditions) in accordance with §307.8 of this title. There must be no lethality to aquatic organisms that move through a ZID, and the sizes of ZIDs are limited in accordance with §307.8 of this title. Specific numerical chronic criteria are applicable to all water in the state with designated or existing aquatic life uses of limited or greater, except inside mixing zones and below critical low-flow conditions, in accordance with §307.8 of this title.

(7) For toxic materials where specific numerical criteria are not listed in Table 1 of paragraph (1) of this subsection, the appropriate criteria for aquatic life protection may be derived in accordance with current EPA guidelines for deriving site-specific water quality criteria. When insufficient data are available to use EPA guidelines, the following provisions are applied in accordance with this section and §307.8 of this title. The LC_{50} data used in the subsequent calculations are typically obtained from traditional laboratory studies; however, if LC_{50} data are unavailable or incomplete, other methodologies (such as quantitative structure-activity relationships) may be used:

(A) acute criteria are calculated as 0.3 of the LC_{50} of the most sensitive aquatic species; $LC_{50} \times$ [~~x~~] (0.3) = acute criteria;

(B) concentrations of nonpersistent toxic materials must not exceed concentrations that are chronically toxic as determined from appropriate chronic toxicity data obtained in accordance with procedures in the EPA guidance document entitled *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Life and Their Uses* (EPA 822-R-85-100) or calculated as 0.1 of acute LC_{50} values to the most sensitive aquatic species; $LC_{50} \times$ [~~x~~] (0.1) = chronic criteria;

(C) concentrations of persistent toxic materials that do not bioaccumulate shall not exceed concentrations that are chronically toxic as determined from appropriate chronic toxicity data obtained in accordance with procedures in the EPA guidance document entitled *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Life and Their Uses* (EPA 822-R-85-100) or calculated as 0.05 of LC_{50} values to the most sensitive aquatic species; $LC_{50} \times$ [~~x~~] (0.05) = chronic criteria; and

(D) concentrations of toxic materials that bioaccumulate must not exceed concentrations that are chronically toxic as determined from appropriate chronic toxicity data obtained in accordance with procedures in the EPA guidance document entitled *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Life and Their Uses* (EPA 822-R-85-100) or calculated as 0.01 of LC_{50} values to the most sensitive aquatic species; $LC_{50} \times$ [~~x~~] (0.01) = chronic criteria.

(8) For toxic substances where the relationship of toxicity is defined as a function of pH or hardness, numerical criteria are presented as an equation based on this relationship. Site-specific values for each segment are given in the standards implementation procedures (RG-194) as amended.

(9) Criteria for most metals are multiplied by a water-effect ratio (WER) in order to incorporate the effects of local water chemistry on toxicity. The WER is assumed to be equal to one except where sufficient site-specific data are available to determine the WER for a particular water body or portion of a water body. A WER is only applicable to those portions of a water body that are adequately addressed by site-specific data. WERs that have been determined for particular water bodies are listed in Appendix E of §307.10 of this title (relating to Appendices A - G) when standards are revised. A site-specific WER that affects an effluent limitation in a wastewater discharge permit, and that has not been incorporated into Appendix E of §307.10 of this title, must be noted in a public notice during the permit application process. An opportunity for public comment must be provided, and the WER may be considered in any public hearing on the permit application.

(10) Freshwater copper aquatic-life criteria include a multiplier (m) to incorporate effects of local water chemistry on toxicity. This multiplier may be based on either a WER or a biotic ligand model. The multiplier is assumed to be equal to one except where sufficient site-specific data are available to determine the multiplier for a particular water body or portion of a water body. The multiplier is only applicable to those portions of a water body that are adequately addressed by site-specific data. As multipliers are determined for particular water bodies they are listed in Appendix E of §307.10 of this title when standards are revised. A site-specific multiplier that affects an effluent limitation in a wastewater discharge permit, and that has not been incorporated into Appendix E of §307.10 of this title, is noted in a public notice during the permit application process. An opportunity for public comment must be provided, and the multiplier may be considered in any public hearing on the permit application.

(11) Additional site-specific factors may indicate that the numerical criteria listed in Table 1 of paragraph (1) of this subsection are inappropriate for a particular water body. These factors are applied as a site-specific standards modification in accordance with §307.2(d) of this title (relating to Description of Standards). The application of a site-specific standard must not impair an existing, attainable, or designated use. Factors that may justify a temporary variance or site-specific standards amendment include the following:

(A) background concentrations of specific toxics of concern in receiving waters, sediment, or indigenous biota;

(B) persistence and degradation rate of specific toxic materials;

(C) synergistic, additive, or antagonistic interactions of toxic substances with other toxic or nontoxic materials;

(D) measurements of total effluent toxicity;

(E) indigenous aquatic organisms, which may have different responses to particular toxic materials;

(F) technological or economic limits of treatability for specific toxic materials;

(G) bioavailability of specific toxic substances of concern, as determined by WER tests or other analyses approved by the commission; and

(H) new information concerning the toxicity of a particular substance.

(d) Specific numerical human health criteria.

(1) Numerical human health criteria are established in Table 2 of this paragraph.
Figure: 30 TAC §307.6(d)(1)
[~~Figure: 30 TAC §307.6(d)(1)~~]

(2) Categories of human health criteria:

(A) concentration criteria to prevent contamination of drinking water, fish, and other aquatic life to ensure that they are safe for human consumption. These criteria apply to surface waters that are designated or used for public drinking water supplies, including all water bodies identified as having a public drinking water supply use in Appendix A of this chapter or as a sole-source surface drinking water supply in Appendix B of this chapter. (Column A in Table 2 of paragraph (1) of this subsection);

(B) concentration criteria to prevent contamination of fish and other aquatic life to ensure that they are safe for human consumption. These criteria apply to surface waters that have sustainable fisheries and that are not designated or used for public water supply or as a sole-source surface drinking water supply (Column B in Table 2 of paragraph (1) of this subsection);

(3) Specific assumptions and procedures (except where noted in Table 2 of paragraph (1) of this subsection).

(A) Sources for the toxicity factors to calculate criteria were derived from EPA's Integrated Risk Information System (IRIS); EPA's *National Recommended Water Quality Criteria: 2002, Human Health Criteria Calculation Matrix* (EPA-822-R-02-012); EPA Health Effects Assessment Summary Tables (HEAST); Assessment Tools for the Evaluation of Risk (ASTER); and the computer program, CLOGP3.

(B) For known or suspected carcinogens (as identified in EPA's IRIS database), an incremental cancer risk level of 10^{-5} (1 in 100,000) was used to derive criteria. An RfD (reference dose) was determined for noncarcinogens and for carcinogens where the EPA has not derived cancer slope factors.

(C) Consumption rates of fish and shellfish were estimated as 17.5 grams per person per day.

(D) Drinking water consumption rates were estimated as 2.0 liters per person per day.

(E) For carcinogens, a body-weight scaling factor of 3/4 power was used to convert data on laboratory test animals to human scale. Reported weights of laboratory test animals are used, and an average weight of 70 kilograms is assumed for humans.

(F) Childhood exposure was considered for all noncarcinogens. Consumption rates for fish and shellfish were estimated as 5.6 grams per child per day, and drinking water consumption rates were estimated as 0.64 liters per child per day. A child body weight was estimated at 15 kilograms. Both the water consumption rate and body weight are age-adjusted for a six-year-old child. The consumption rate for fish and shellfish for children is from Table 10-61 of EPA's 1997 *Exposure Factors Handbook* (EPA/600/P-95/002Fa-c).

(G) Numerical human health criteria were derived in accordance with the general procedures and calculations in the EPA guidance documents entitled *Technical Support Document for Water Quality-based Toxics Control* (EPA/505/2-90-001); *Guidance Manual for Assessing Human Health Risks from Chemically Contaminated Fish and Shellfish* (EPA/503/8-89-002); and *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)* (EPA-822-B-00-004).

(H) If a calculated criterion to prevent contamination of drinking water and fish to ensure they are safe for human consumption (Column A in Table 2 of paragraph (1) of this subsection) was greater than the applicable maximum contaminant level (MCL) in Chapter 290 of this title (relating to Public Drinking Water), then the MCL was used as the criterion.

(I) If the concentration of a substance in fish tissue used for these calculations was greater than the applicable United States Food and Drug Administration Action Level for edible fish and shellfish tissue, then the acceptable concentration in fish tissue was lowered to the Action Level for calculation of criteria.

(4) Human health criteria for additional toxic materials are adopted by the commission as appropriate.

(5) Specific human health concentration criteria for water are applicable to water in the state that has sustainable fisheries or designation or use as a public drinking water supply or as a sole-source drinking water supply except within mixing zones and below stream flow conditions as specified in §307.8 of this title. The following waters are considered to have sustainable fisheries:

(A) all designated segments listed in Appendix A of §307.10 of this title, unless specifically exempted;

(B) perennial streams and rivers with a stream order of three or greater, as defined in §307.3 of this title (relating to Definitions and Abbreviations);

(C) lakes and reservoirs greater than or equal to 150 acre-feet or 50 surface acres;

(D) all bays, estuaries, and tidal rivers; and

(E) any other waters that potentially have sufficient fish production or fishing activity to create significant long-term human consumption of fish.

(6) Waters that are not considered to have a sustainable fishery, but that have an aquatic life use of limited or greater, are considered to have an incidental fishery. Consumption rates assumed for incidental fishery waters are 1.75 grams per person per day. Therefore, numerical criteria applicable to incidental fishery waters are ten times the criteria listed in Column B of Table 2 of paragraph (1) of this subsection.

(7) Specific human health criteria are applied as long term average exposure criteria designed to protect populations over a life time. Attainment measures for human health are addressed in §307.9 of this title.

(8) For toxic materials of concern where specific human health criteria are not listed in Table 2 of paragraph (1) of this subsection, the following provisions apply:

(A) For known or suspected carcinogens (as identified in EPA's IRIS database), a cancer risk of 10^{-5} (1 in 100,000) is applied to the most recent numerical criteria adopted by the EPA and published in the *Federal Register*. If an MCL or equivalent agency guideline for protection of drinking water sources is less than the resulting criterion, then the MCL applies to public drinking water supplies in accordance with paragraph (3)(H) of this subsection.

(B) For toxic materials not defined as carcinogens, the most recent numerical criteria adopted by the EPA and published in the *Federal Register* are applicable. If an MCL or equivalent agency guideline for protection of drinking water sources is less than the resulting criterion, then the MCL applies to public drinking water supplies in accordance with paragraph (3)(H) of this subsection.

(C) In the absence of available criteria, numerical criteria may be derived from technically valid information and calculated in accordance with the provisions of paragraph (3) of this subsection.

(9) Numerical criteria for bioconcentratable pollutants are derived in accordance with the general procedures in the EPA guidance document entitled *Assessment and Control of Bioconcentratable*

Contaminants in Surface Water (March 1991). The commission may develop discharge permit limits in accordance with the provisions of this section.

(10) Numerical human health criteria are expressed as total recoverable concentrations for nonmetals and selenium and as dissolved concentrations for other metals and metalloids. [~~Criteria for several highly bioaccumulative pollutants are expressed as concentrations in fish tissue.~~]

(11) Additional site-specific factors may indicate that the numerical human health criteria listed in Table 2 of paragraph (1) of this subsection are inappropriate for a particular water body. These factors are applied as a site-specific standards modification in accordance with §307.2(d) of this title. The application of site-specific criteria must not impair an existing, attainable, presumed, or designated use or affect human health. Factors that may justify a temporary variance or site-specific standards amendment include the following:

(A) background concentrations of specific toxics of concern in receiving waters, sediment, or indigenous biota;

(B) persistence and degradation rate of specific toxic materials;

(C) synergistic or antagonistic interactions of toxic substances with other toxic or nontoxic materials;

(D) technological or economic limits of treatability for specific toxic materials;

(E) bioavailability of specific toxic substances of concern;

(F) local water chemistry and other site-specific conditions that may alter the bioconcentration, bioaccumulation, or toxicity of specific toxic substances;

(G) site-specific differences in the bioaccumulation responses of indigenous, edible aquatic organisms to specific toxic materials;

(H) local differences in consumption patterns of fish and shellfish or drinking water, but only if any changes in assumed consumption rates are protective of the local population that frequently consumes fish, shellfish, or drinking water from a particular water body; and

(I) new information concerning the toxicity of a particular substance.

(e) Total toxicity.

(1) Total (whole-effluent) toxicity of permitted discharges, as determined from biomonitoring of effluent samples at appropriate dilutions, must be sufficiently controlled to preclude acute total toxicity in all water in the state with the exception of small ZIDs at discharge points and at extremely low streamflow conditions (one-fourth of critical low-flow conditions) in accordance with §307.8 of this title. Acute total toxicity levels may be exceeded in a ZID, but there must be no significant lethality to aquatic organisms that move through a ZID, and the sizes of ZIDs are limited in accordance with §307.8 of this title. Chronic total toxicity, as determined from biomonitoring of effluent samples at appropriate dilutions, must be sufficiently controlled to preclude chronic toxicity in all water in the state with an existing or designated aquatic life use of limited or greater except in mixing zones at discharge points and at flows less than critical low-flows, in accordance with §307.8 of this title. Chronic toxicity levels may be exceeded in a mixing zone, but there must be no significant sublethal toxicity to aquatic organisms that move through the mixing zone.

(2) General provisions for controlling total toxicity.

(A) Dischargers whose effluent has a significant potential for exerting toxicity in receiving waters as described in the *Procedures to Implement the Texas Surface Water Quality Standards* (RG-194) as amended are required to conduct whole effluent toxicity biomonitoring at appropriate dilutions.

(B) In addition to the other requirements of this section, the effluent of discharges to water in the state must not be acutely toxic to sensitive species of aquatic life, as demonstrated by effluent toxicity tests. Toxicity testing for this purpose is conducted on samples of 100% effluent, and the criterion for acute toxicity is mortality of 50% or more of the test organisms after 24 hours of exposure. This provision does not apply to mortality that is a result of an excess, deficiency, or imbalance of dissolved inorganic salts (such as sodium, calcium, potassium, chloride, or carbonate) that are in the effluent and are not listed in Table 1 in subsection (c)(1) of this section or that are in source waters.

(C) The latest revisions of the following EPA publications provide methods for appropriate biomonitoring procedures: Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, and the Technical Support Document for Water Quality-based Toxics Control. The use of other procedures approved by the agency and the EPA is also acceptable. Toxicity tests must be conducted using representative, sensitive aquatic organisms as approved by the agency, and any such testing must adequately determine if toxicity standards are being attained.

(D) If toxicity biomonitoring results indicate that a discharge is not sufficiently controlled to preclude acute or chronic toxicity as described in this subsection, then the permittee will be required to eliminate sources of toxicity and may be required to conduct a toxicity reduction evaluation (TRE) in accordance with the permitting procedures of the commission. In accordance with the implementation procedures, permits are amended to include appropriate provisions to eliminate toxicity. Such provisions may include total toxicity limits, chemical-specific limits, best management practices, or other actions (such as moving a discharge location) designed to reduce or eliminate toxicity. Where sufficient to attain and maintain applicable numeric and narrative state water quality standards, a chemical-specific limit, best management practices, or other actions designed to reduce or eliminate toxicity rather than a total toxicity limit may be established in the permit. Where conditions may be necessary to prevent or reduce effluent toxicity, permits must include a reasonable schedule for achieving compliance with such additional conditions.

(E) Discharge permit limits based on total toxicity may be established in consideration of site-specific factors, but the application of such factors must not result in impairment of an existing, attainable, presumed, or designated use. These factors are applied as a site-specific standards modification in accordance with §307.2(d) of this title. A demonstration that uses are protected may consist of additional effluent toxicity testing, instream monitoring requirements, or other necessary information as determined by the agency. Factors that may justify a temporary variance or site-specific standards amendment include the following:

(i) background toxicity of receiving waters;

(ii) persistence and degradation rate of principal toxic materials that are contributing to the total toxicity of the discharge;

(iii) site-specific variables that may alter the impact of toxicity in the discharge;

(iv) indigenous aquatic organisms, that may have different levels of sensitivity than the species used for total toxicity testing; and

(v) technological, economic, or legal limits of treatability or control for specific toxic material.

§307.7. Site-Specific Uses and Criteria.

(a) Uses and numerical criteria are established on a site-specific basis in Appendices A, B, D, E, F, and G of §307.10 of this title (relating to Appendices A - G). Site-specific uses and numerical criteria may also be applied to unclassified waters in accordance with §307.4 of this title (relating to General Criteria) and §307.5(c) of this title (relating to Antidegradation). Site-specific criteria apply specifically to substances attributed to waste discharges or human activity. Site-specific criteria do not apply to those instances when surface waters exceed criteria due to natural phenomena. The application of site-specific uses and criteria is described in §307.8 of this title (relating to the Application of Standards) and §307.9 of this title (relating to the Determination of Standards Attainment).

(b) Appropriate uses and criteria for site-specific standards are defined as follows.

(1) Recreation. Recreational use consists of five [~~four~~] categories--primary contact recreation 1, primary contact recreation 2, secondary contact recreation 1, secondary contact recreation 2, and noncontact recreation waters. Classified segments are designated for primary contact recreation 1 unless sufficient site-specific information demonstrates that elevated concentrations of indicator bacteria frequently occur due to sources of pollution that cannot be reasonably controlled by existing regulations, wildlife sources of bacteria are unavoidably high and there is limited aquatic recreational potential, or primary or secondary contact recreation is considered unsafe for other reasons such as ship or barge traffic. In a classified segment where contact recreation is considered unsafe for reasons unrelated to water quality, a designated use of noncontact recreation may be assigned either noncontact recreation criteria or criteria normally associated with primary contact recreation. A designation of primary or secondary contact recreation is not a guarantee that the water so designated is completely free of disease-causing organisms. Indicator bacteria, although not generally pathogenic, are indicative of potential contamination by feces of warm blooded animals. Recreational criteria are based on these indicator bacteria rather than direct measurements of pathogens. Criteria are expressed as the number of bacteria per 100 milliliters mL [~~(ml)~~] of water (in terms of colony forming units, most probable number, or other applicable reporting measures). Even where the concentration of indicator bacteria is less than the criteria for primary or secondary contact recreation, there is still some risk of contracting waterborne diseases. Additional guidelines on minimum data requirements and procedures for evaluating standards attainment are specified in the *TCEQ Guidance for Assessing and Reporting Surface Water Quality in Texas,* as amended.

(A) Freshwater.

(i) Primary contact recreation 1. The geometric mean criterion for *E. coli* is 126 per 100 mL [~~(ml)~~]. In addition, the single sample criterion for *E. coli* is 399 per 100 mL [~~ml~~].

(ii) Primary contact recreation 2. The geometric mean criterion for *E. coli* is 206 per 100 mL.

(iii) [~~(ii)~~] Secondary contact recreation 1. The geometric mean criterion for *E. coli* is 630 per 100 mL [~~(ml)~~].

(iv) [~~(iii)~~] Secondary contact recreation 2. The geometric mean criterion for *E. coli* is 1,030 per 100 mL [~~ml~~].

(v) [~~(iv)~~] Noncontact recreation. The geometric mean criterion for *E. coli* is 2,060 per 100 mL [~~ml~~].

(vi) [~~(v)~~] For high saline inland water bodies where Enterococci is the designated recreational indicator in Appendix A of §307.10 of this title, Enterococci is the applicable recreational indicator for instream bacteria sampling at all times for the classified water body and for the unclassified water bodies that are within the watershed of that classified segment, unless it is demonstrated that an unclassified water body is not high saline. *E. coli* is the applicable recreational indicator for instream bacteria sampling at all times for unclassified water bodies where conductivity values indicate that the water bodies are not high saline. For high saline inland waters with primary contact recreation 1, the geometric mean criterion for Enterococci is 33 per 100 mL [~~ml~~] and the single sample criterion is 78 per 100 mL [~~ml~~]. For high saline inland waters with secondary contact recreation 1, the geometric mean criterion for Enterococci is 165 per 100 mL [~~ml~~]. For high saline inland waters with secondary contact recreation 2, the geometric mean criterion for Enterococci is 270 per 100 mL [~~ml~~]. For high saline inland water bodies with noncontact recreation, the geometric mean criterion for Enterococci is 540 per 100 mL [~~ml~~].

(B) Saltwater.

(i) Primary contact recreation 1. The geometric mean criterion for Enterococci is 35 per 100 mL [~~(ml)~~]. In addition, the single sample criterion for Enterococci is 104 per 100 mL [~~ml~~].

(ii) Secondary contact recreation 1. A secondary contact recreation 1 use for tidal streams and rivers can be established on a site-specific basis in §307.10 of this title if justified by a use-attainability analysis and the water body is not a coastal recreation water as defined in the Beaches Environmental Assessment and Coastal Health Act of 2000 (BEACH Act). The geometric mean criterion for Enterococci is 175 per 100 mL [~~ml~~].

(iii) Noncontact recreation. A noncontact recreation use for tidal streams and rivers can be established on a site-specific basis in §307.10 of this title if justified by a use-attainability analysis and the water body is not a coastal recreation water as defined in the BEACH Act. The geometric mean criterion for Enterococci is 350 per 100 mL [~~ml~~].

[~~(C) Fecal coliform bacteria. Fecal coliform bacteria can be used as an alternative instream indicator of recreational suitability in high saline inland water bodies where Enterococci is the designated recreational indicator in Appendix A of §307.10 of this title for two years after the adoption of this title to allow time to collect sufficient data for Enterococci. Fecal coliform criteria for high saline inland water bodies are as follows:~~]

[~~*(i)* Primary contact recreation. The geometric mean criterion for fecal coliform is 200 per 100 ml. In addition, the single sample criterion for fecal coliform is 400 per 100 ml.~~]

[~~*(ii)* Secondary contact recreation 1 and 2. The geometric mean criterion for fecal coliform is 1,000 per 100 ml.~~]

[~~*(iii)* Noncontact recreation. The geometric mean criterion for fecal coliform is 2,000 per 100 ml.~~]

(C) [~~(D)~~] Swimming advisory programs. For areas where local jurisdictions or private property owners voluntarily provide public notice or closure based on water quality, the use of any single-sample or short-term indicators of recreational suitability are selected at the discretion of the local managers of aquatic recreation. Guidance for single-sample bacterial indicators is available in the

United States Environmental Protection Agency (EPA) document entitled *Ambient Water Quality Criteria for Bacteria - 1986.* Other short-term indicators to assess water quality suitability for recreation - such as measures of streamflow, turbidity, or rainfall - may also be appropriate.

(2) Domestic water supply.

(A) Use categories. Domestic water supply consists of three use subcategories - public water supply, sole-source surface drinking water supply, and aquifer protection.

(i) Public water supply. Segments designated for public water supply are those known to be used or exhibit characteristics that would allow them to be used as the supply source for public water systems as defined by Chapter 290 of this title (relating to Public Drinking Water).

(ii) Sole-source surface drinking water supplies and their protection zones. Water bodies that are sole-source surface drinking water supplies are listed in Appendix B of §307.10 of this title. Sole-source surface drinking water supplies and their protection zones are addressed in Chapter 321 of this title (relating to Subchapter B: Concentrated Animal Feeding Operations).

(iii) Aquifer protection. Segments designated for aquifer protection are capable of recharging the Edwards Aquifer. The principal purpose of this use designation is to protect the quality of water infiltrating into and recharging the aquifer. The designation for aquifer protection applies only to those portions of the segments so designated that are on the recharge zone, transition zone, or contributing zone as defined in Chapter 213 of this title (relating to the Edwards Aquifer). Chapter 213 of this title establishes provisions for activities in the watersheds of segments that are designated for aquifer protection.

(B) Use criteria. The following use criteria apply to all domestic water supply use subcategories.

(i) Radioactivity associated with dissolved minerals in the freshwater portions of river basin and coastal basin waters should not exceed levels established by drinking water standards as specified in Chapter 290 of this title unless the conditions are of natural origin.

(ii) Surface waters utilized for domestic water supply must not exceed toxic material concentrations that prevent them from being treated by conventional surface water treatment to meet drinking water standards as specified in Chapter 290 of this title.

(iii) Chemical and microbiological quality of surface waters used for domestic water supply should conform to drinking water standards as specified in Chapter 290 of this title.

(3) Aquatic life. The establishment of numerical criteria for aquatic life is highly dependent on desired use, sensitivities of aquatic communities, and local physical and chemical characteristics. Six subcategories of aquatic life use are established. They include minimal, limited, intermediate, high, and exceptional aquatic life and oyster waters. Aquatic life use subcategories designated for segments listed in Appendix A of §307.10 of this title recognize the natural variability of aquatic community requirements and local environmental conditions.

(A) Dissolved oxygen.

(i) The characteristics and associated dissolved oxygen criteria for limited, intermediate, high, and exceptional aquatic life use subcategories are indicated in Table 3 of this clause. This table also includes dissolved oxygen criteria for a minimal aquatic life use subcategory that applies to intermittent streams without perennial pools as indicated in §307.4(h)(4) of this title.
Figure: 30 TAC §307.7(b)(3)(A)(i) (No change.)

(ii) Critical low-flow values associated with the bedslopes and dissolved oxygen criteria in Table 4 of this clause apply to streams that have limited, intermediate, high, or exceptional aquatic life uses and to streams that are specifically listed in Appendix A or D of §307.10 of this title. The critical low-flow values in Table 4 of this clause apply to streams in Texas that are east of a line defined by Interstate Highways 35 and 35W from the Red River to the community of Moore in Frio County, and by United States Highway 57 from the community of Moore to the Rio Grande. Table 4 of this clause does not apply where specifically superseded [~~supercceded~~] by the equation that is listed in footnote 3 in the Cypress Creek Basin in Appendix A and in footnote 2 in Appendix D of §307.10 of this title. The critical low-flow values in Table 4 of this clause (at the appropriate stream bedslope) are utilized as headwater flows when the flows are larger than applicable seven-day, two-year low-flows in order to determine discharge effluent limits necessary to achieve dissolved oxygen criteria. For streams that have bedslopes less than the minimum bedslopes in Table 4, the flows listed for the minimum bedslope of 0.1 meters per kilometer (m/km) are applicable. For streams that have bedslopes greater than the maximum bedslope in Table 4 of this clause, the flows listed for the maximum bedslope of 2.4 m/km are applicable. The required effluent limits are those necessary to achieve each level of dissolved oxygen (as defined in clause (i) of this subparagraph, Table 3) at or below an assigned, designated, or presumed aquatic life use. Presumed aquatic life uses must be in accordance with those required by §307.4(h) of this title. The critical low-flow values in Table 4 of this clause do not apply to tidal streams.
Figure: 30 TAC §307.7(b)(3)(A)(ii) (No change.)

(iii) The critical low-flow values in Table 4 of clause (ii) of this subparagraph for limited, intermediate, high, and exceptional aquatic life uses are based upon data from the commission's least impacted stream study (Texas Aquatic Ecoregion Project). Results of this study indicate a strong dependent relationship for average summertime background dissolved oxygen concentrations and several hydrologic and physical stream characteristics - particularly bedslope (stream gradient) and stream flow. The critical low-flow values in Table 4 of clause (ii) of this subparagraph are derived from a multiple regression equation for the eastern portion of Texas as defined in clause (ii) of this subparagraph. Further explanation of the development of the regression equation and its application are contained in the standards implementation procedures as amended.

(iv) The critical low-flow values in Table 4 of clause (ii) of this subparagraph may be adjusted based on site-specific data relating dissolved oxygen concentrations to factors such as flow, temperature, or hydraulic conditions in accordance with the standards implementation procedures as amended. Site-specific, critical low-flow values require approval by the commission. The EPA must review any site-specific, critical low-flow values that could affect permits or other regulatory actions that are subject to approval by EPA. Critical low-flow values that have been determined for particular streams are listed in the standards implementation procedures.

(B) Oyster waters.

(i) A 1,000 foot buffer zone, measured from the shoreline at ordinary high tide, is established for all bay and gulf waters except those contained in river or coastal basins as defined in §307.2 of this title (relating to Description of Standards). Recreational criteria for indicator bacteria, as specified in §307.7(b)(1) of this title (relating to Site-Specific Uses and Criteria), are applicable within buffer zones.

(ii) The criteria for median fecal coliform concentration in bay and gulf waters, exclusive of buffer zones, are 14 colonies per 100 mL [~~ml~~] with not more than 10% of all samples exceeding 43 colonies per 100 mL [~~ml~~].

(iii) Oyster waters should be maintained so that concentrations of toxic materials do not cause edible species of clams, oysters, and mussels to exceed accepted guidelines for the protection of public health. Guidelines are provided by the United States Food and Drug Administration Action Levels for molluscan shellfish, but additional information related to human health protection may also be considered in determining acceptable toxic concentrations.

(4) Additional criteria.

(A) Chemical parameters. Site-specific criteria for chloride, sulfate, and total dissolved solids are established as averages over an annual period for either a single sampling point or multiple sampling points.

(B) pH. Site-specific numerical criteria for pH are established as absolute minima and maxima.

(C) Temperature. Site-specific temperature criteria are established as absolute maxima.

(D) Toxic materials. Criteria for toxic materials are established in §307.6 of this title (relating to Toxic Materials).

(E) Nutrient criteria. Numeric and narrative criteria to preclude excessive growth of aquatic vegetation are intended to protect multiple uses such as primary, secondary, and noncontact recreation, aquatic life, and public water supplies. Nutrient numeric criteria for specific reservoirs, expressed as concentrations of chlorophyll *a* in water, are listed in Appendix F of §307.10 of this title.

(5) Additional uses. Other basic uses, such as navigation, agricultural water supply, industrial water supply, seagrass propagation, and wetland water quality functions must be maintained and protected for all water in the state where these uses can be achieved.

§307.8. Application of Standards.

(a) Flow conditions.

(1) The following standards do not apply below critical low-flows:

(A) site-specific criteria for dissolved oxygen, pH, temperature, and numerical chronic criteria for toxic materials, as listed in Appendices A, D, and E of §307.10 of this title (relating to Appendices A - G);

(B) numerical chronic criteria for toxic materials as established in §307.6 of this title (relating to Toxic Materials);

(C) total chronic toxicity restrictions as established in §307.6 of this title;

(D) maximum temperature differentials as established in §307.4(f) of this title (relating to General Criteria); and

(E) dissolved oxygen criteria for unclassified waters, as established in §307.4(h) of this title and §307.7(b)(3) of this title (relating to Site-Specific Uses and Criteria).

(2) Critical low-flows for streams or rivers that are dominated by springflow are listed in the standards implementation procedures as amended and are calculated as follows:

(A) for springflow-dominated streams or rivers that contain federally listed endangered or threatened aquatic or aquatic dependent species, the critical low-flow value is the 0.1 percentile value derived from a lognormal distribution for the period of record at the nearest United States Geological Survey (USGS) or International Boundary and Water Commission (IBWC) gauging station [~~gage~~];

(B) for springflow-dominated streams or rivers that do not contain federally listed endangered or threatened species, the critical low-flow value is the 5th percentile value of the flow data for the period of record at the nearest USGS or IBWC gauging station [~~gage~~].

(3) Numerical acute criteria for toxic materials and preclusion of total acute toxicity as established in §307.6 of this title are applicable at stream flows that are equal to or greater than one-fourth of critical low-flows.

(4) Harmonic mean flow is the applicable upstream flow when calculating wastewater permit limits for criteria that are assessed as long-term means, such as criteria for total dissolved solids, chloride, sulfate [~~chlorides, sulfates~~] in Appendix A of §307.10 of this title, and human health toxic criteria in Table 2 of §307.6(d)(1) of this title. These criteria are applicable at all flow conditions except as specified for the applicability of assessment data in §307.9 of this title (relating to Determination of Standards and Attainment).

(5) Critical low-flows and harmonic mean flows for some classified segments are listed in the standards implementation procedures as amended. These critical low-flows are not for the purpose of regulating flows in water bodies in any manner or requiring that minimum flows be maintained in classified segments.

(6) Critical low-flows and harmonic mean flows listed in the standards implementation procedures as amended apply only to river basin and coastal basin waters. They do not apply to bay waters, gulf waters, reservoirs, or estuaries.

(7) Critical low-flows and harmonic mean flows in the standards implementation procedures as amended were calculated from historical USGS or IBWC daily streamflow records. If the calculated critical low-flow or harmonic mean flow value was equal to or less than 0.1 cubic foot per second (cfs) [~~(ft^3/s)~~], it was rounded up to 0.1 cfs [~~ft^3/s~~].

(8) Flow values are periodically recomputed to reflect alterations in the hydrologic characteristics of a segment, including reservoir construction, climatological trends, and other phenomena.

(9) The general criteria are applicable at all flow conditions except as specified in this section or in §307.4 of this title.

(b) Mixing zones. A reasonable mixing zone is allowed at the discharge point of permitted discharges into surface water in the state, in accordance with the following provisions.

(1) The following portions of the standards do not apply within mixing zones:

(A) site-specific criteria, as defined in §307.7 of this title and listed in Appendices A, D, E, F, and G of §307.10 of this title;

(B) numerical chronic aquatic life criteria for toxic materials as established in §307.6 of this title;

(C) total chronic toxicity restrictions as established in §307.6 of this title;

(D) maximum temperature differentials as established in §307.4(f) of this title;

(E) dissolved oxygen criteria for unclassified waters, as established in §307.4(h) of this title;

(F) dissolved oxygen criteria for intermittent streams, as established in §307.4(h)(4) of this title;

(G) aquatic recreation criteria for unclassified waters, as established in §307.4(j) of this title and in §307.7(b)(1) of this title;

(H) specific human health criteria for concentrations in water to prevent contamination of drinking water, fish and shellfish so as to ensure safety for human consumption, as established in §307.6 of this title.

(2) Numerical acute aquatic life criteria for toxic materials and preclusion of total acute toxicity as established in §307.6 of this title are applicable in mixing zones. Acute criteria and acute total toxicity levels may be exceeded in small zones of initial dilution (ZIDs) at discharge points of permitted discharges, but there must be no lethality to aquatic organisms that move through a ZID. ZIDs must not exceed the following sizes:

(A) 60 feet downstream and 20 feet upstream from a discharge point in a stream and river. In addition, ZIDs in streams and rivers must not encompass more than 25% of the volume of stream flow at or above seven-day, two-year low-flow conditions;

(B) a 25-foot radius in all directions (or equivalent volume or area for diffuser systems) from a discharge point in a lake or reservoir; and

(C) a 50-foot radius in all directions (or equivalent volume or area for diffuser systems) from a discharge point in a bay, a tidal river, an [~~or~~] estuary, or the Gulf of Mexico.

(3) Provisions of the general criteria in §307.4 of this title remain in effect in mixing zones unless specifically exempted in this section.

(4) Water quality standards do not apply to treated effluent at the immediate point of discharge prior to any contact with either ambient waters or a dry streambed. However, effluent total toxicity requirements may be specified to preclude acute lethality near discharge points, or to preclude acute and chronic instream toxicity.

(5) Where a mixing zone is defined in a valid permit of the Texas Commission on Environmental Quality, the Railroad Commission of Texas, or the United States Environmental Protection Agency, the mixing zone defined in the permit must apply.

(6) Mixing zones must not preclude passage of free-swimming or drifting aquatic organisms to the extent that aquatic life use is significantly affected, in accordance with guidelines specified in the standards implementation procedures as amended.

(7) Mixing zones must not overlap unless it can be demonstrated that no applicable standards will be violated in the area of overlap. Existing and designated uses must not be impaired by the combined impact of a series of contiguous mixing zones.

(8) Mixing zones must not encompass an intake for a domestic drinking water supply. Thermal mixing zones are excepted from this provision unless elevated temperatures adversely affect drinking water treatment.

(9) Mixing zones must be individually specified for all permitted domestic discharges with a permitted monthly average flow equal to or exceeding one million gallons per day and for all permitted industrial discharges to water in the state (excepting discharges that consist entirely of stormwater [~~storm water~~] runoff). For domestic discharges with permitted monthly average flows less than one million gallons per day, a small mixing zone must be assumed in accordance with guidelines for mixing zone sizes specified in the standards implementation procedures as amended; and the commission may require specified mixing zones as appropriate.

(10) Different mixing zone sizes for specific numeric criteria, such as for the protection of human health, aquatic life, and temperature, may be specified in a wastewater permit. [~~The size of mixing zones for human health criteria may vary from the size of mixing zones for aquatic life criteria.~~]

(c) Minimum analytical levels. The specified definition of permit compliance for a specific toxic material must not be lower than established minimum analytical levels, unless that toxic material is of particular concern in the receiving waters, or unless an effluent specific method detection limit has been developed in accordance with 40 Code of Federal Regulations Part 136. Minimum analytical levels are listed in the standards implementation procedures as amended.

(d) Once-through cooling water discharges. When a discharge of once-through cooling water does not measurably alter intake concentrations of a pollutant, then water-quality based effluent limits for that pollutant are not required. For facilities that intake and discharge cooling-water into different water bodies, this provision only applies if water quality and applicable water quality standards in the receiving water are maintained and protected.

(e) Stormwater [~~Storm water~~] discharges. Pollution in stormwater [~~storm water~~] must not impair existing or designated uses. Controls on the quality of stormwater [~~storm water~~] discharges must be based on best management practices, technology-based limits, or both in combination with instream monitoring to assess standards attainment and to determine if additional controls on stormwater [~~storm water~~] quality are needed. The standards implementation procedures as amended describe how water quality standards are applied to Texas Pollutant Discharge Elimination System stormwater [~~storm water~~] discharges. The evaluation of instream monitoring data for standards attainment includes the effects of stormwater [~~storm water~~], as described in §307.9 of this title.

§307.9. Determination of Standards Attainment.

(a) General standards attainment sampling and assessment procedures. The procedures listed in this section are solely for the purposes of assessing water quality monitoring data to determine if water quality standards are attained in individual water bodies. Unless otherwise stated in this chapter, additional details concerning sampling procedures for the measurement, collection, preservation and laboratory analysis of water quality samples are provided in the Texas Commission on Environmental Quality (TCEQ) *Surface Water Quality Monitoring Procedures* as amended, the most recently published edition of the book entitled *Standard Methods for the Examination of Water and Wastewater,* 40 Code of Federal Regulations (CFR) Part 136, or other reliable sources acceptable to the commission. Laboratory accreditation requirements are specified in Chapter 25 of this title (relating to Environmental Testing Laboratory Accreditation and Certification). Unless otherwise stated in this chapter, additional details concerning how sampling data are evaluated to assess standards compliance are provided in the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

(b) Samples to determine standards attainment are collected at locations approved by the commission. Samples collected at non-approved locations may be accepted at the discretion of the commission. Samples to determine standards attainment in ambient water must be representative in terms of location, seasonal variations, and hydrologic conditions. Locations must be typical of significant areas of a water body. Temporal sampling must be sufficient to appropriately address seasonal variations of concern. Sample results that are used to assess standards attainment must not include samples that are collected during extreme hydrologic conditions such as high-flows and flooding immediately after heavy rains. Further guidance on representative sampling, both spatially, temporally, and hydrologically, can be found

in the TCEQ *Surface Water Quality Monitoring Procedures* and the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

(c) Collection and preservation of water samples.

(1) For the purposes of assessing standards attainment, [~~To ensure that representative~~] samples are collected [~~and to minimize alterations prior to analysis, collection~~] and preserved [~~preservation of attainment determination samples are~~] in accordance with procedures set forth in the most recently published edition of the book entitled *Standard Methods for the Examination of Water and Wastewater,* the TCEQ *Surface Water Quality Monitoring Procedures* as amended, 40 CFR Part 136, or other reliable procedures acceptable to the commission.

(2) Bacterial and temperature determinations must be conducted on samples or measurements taken at or near the surface in accordance with the TCEQ *Surface Water Quality Monitoring Procedures* as amended. Depth collection procedures for chloride, sulfate, total dissolved solids, dissolved oxygen, chlorophyll *a*, and pH to determine standards attainment may vary depending on the water body being sampled. Standards for chloride, sulfate, total dissolved solids, dissolved oxygen, chlorophyll *a*, pH are applicable to the mixed surface layer, but a single sample taken near the surface normally provides an adequate representation of these parameters. When the water column is entirely mixed according to determinations described in TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended, standards may apply to any sample taken in the water column for parameters indicated in this section.

(3) For toxic materials, numerical aquatic life criteria are applicable to water samples collected at any depth. Numerical human health criteria are applicable to the average (arithmetic) concentration from the surface to the bottom. For the purposes of standards attainment for aquatic life protection and human health protection, samples that are collected at approximately one foot below the water surface are acceptable for assessing standards attainment of numerical criteria.

(d) Sample analysis.

(1) Numerical criteria. Procedures for laboratory analysis must be in accordance with the most recently published edition of the book entitled *Standard Methods for the Examination of Water and Wastewater,* the TCEQ *Texas Surface Water Quality Monitoring Procedures* as amended, 40 CFR Part 136, or other reliable procedures acceptable to the commission, and in accordance with Chapter 25 of this title.

(2) Radioactivity. Measurements must be made on filtered samples to determine radioactivity associated with dissolved minerals in accordance with current analytical methodology approved by the United States Environmental Protection Agency (EPA).

(3) Toxicity. Bioassay techniques must be selected as testing situations dictate but are generally conducted using representative sensitive organisms in accordance with §307.6 of this title (relating to Toxic Materials).

(e) Sampling periodicity and evaluation.

(1) Chloride, sulfate, total dissolved solids. Standards attainment determinations to demonstrate compliance with the annual average may [~~must~~] be based on the long term mean in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended. Results from all monitoring stations within the segment are used to allow for reasonable parametric gradients. Total dissolved solids determinations may be based on measurements of specific conductance.

(2) Radioactivity. The impact of radioactive sources on surface waters must be evaluated in accordance with Chapter 336 of this title (relating to Radioactive Substance Rules), and in accordance with Chapter 290 of this title (relating to Public Drinking Water).

(3) Bacteria. Standards attainment must be based on a long-term geometric mean of applicable samples in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended, and data are evaluated in accordance with the provisions of §307.7(b)(1) of this title (relating to Site-Specific Uses and Criteria). Determination of attainment may account for statistical variability to reduce uncertainty in evaluations in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended. Samples may be evaluated with the single sample maximum criterion for purposes of swimmer safety notification programs and wastewater permit compliance. [~~Samples must not include extreme hydrologic conditions such as very high-flows and flooding immediately after heavy rains. The high-flow exemption applies for a 24-hour period following the last measured or estimated determination that extreme hydrologic conditions exist. A high-flow exemption applies during either of the following hydrologic conditions:~~]

[~~(A) freshwater stream flow that exceeds the 90th percentile flow using historical records for the nearest United States Geological Survey (USGS) or International Boundary and Water Commission (IBWC) gage, as found on the USGS or IBWC websites for many Texas gages, or by calculating the percentile flow for small freshwater streams without gages using statistical corrections to account for relative watershed size; or,~~]

[~~(B) an estimated flow severity index of flood or an equivalent category. This applies to tidal and freshwater streams.~~]

(4) Toxic materials. Standards attainment must be evaluated in accordance with §307.6 of this title, and in accordance with §307.8 of this title (relating to Application of Standards). To protect aquatic life, specific numerical acute toxic criteria are applied as 24-hour averages, and specific numerical chronic toxic criteria are applied as seven-day averages. Human health criteria are applied as long-term average exposure criteria designed to protect populations over a life time. Standards attainment for acute and chronic toxic criteria for aquatic life and human health criteria must be in accordance with the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended. Standards attainment for human health criteria must be based on the mean of samples collected in accordance with the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

(5) Temperature and pH. Standards attainment must be in accordance with the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

(6) Dissolved oxygen.

(A) Criteria for daily (24-hour) average concentrations must be compared to a time-weighted average of measurements taken over a 24-hour period in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

(B) Criteria for minimum concentrations must be compared to individual measurements in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended. When data are collected over a 24-hour period, the lowest measurement observed during that 24-hour period is compared to the applicable minimum criterion.

(7) Chlorophyll *a* in reservoirs. Standards attainment must be based on the long term median of chlorophyll *a* measurements in accordance with TCEQ *Guidance for Assessing and Reporting Sur-*

face Water Quality in Texas as amended. Medians are compared to the chlorophyll *a* criteria for individual reservoirs in Appendix F of §307.10 of this title (relating to Appendices A - G). The data for the assessment must be collected at the sampling stations used for calculating the criteria [~~and screening levels~~], as listed in Appendix F of §307.10 of this title, or from comparable stations in the main pool of the reservoir.

(8) Site-specific criteria for aquatic recreation (geometric mean), total dissolved solids, chloride, and sulfate as established in Appendix A of §307.10 of this title, and human health criteria as established in Table 2 of §307.6(d)(1) of this title do not apply in the following stream types and flow conditions:

(A) perennial streams when flows are below 0.1 cubic feet per second;

(B) intermittent streams when less than 20% of the stream bed of a 500 meter sampling reach is covered by pools; or when extremely dry conditions are indicated by comparable observations of flow severity.

(f) Biological integrity. Biological integrity, which is an essential component of the aquatic life categories defined in §307.7(b)(3) of this title (relating to Site-Specific Uses and Criteria), is assessed by sampling the aquatic community. Attainment of biological integrity is assessed by indices of biotic integrity that are described in the TCEQ *Surface Water Quality Monitoring Procedures* as amended. Determination of attainment may account for statistical variability to reduce uncertainty in evaluations in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended. Primary criteria associated with assessing the attainment of aquatic life uses are indices of biotic integrity and criteria for dissolved oxygen. [~~When monitoring data indicate that primary criteria are not being attained for a presumed high aquatic life use, as defined in §307.4(h) of this title (relating to General Criteria), the affected water body is not automatically considered impaired and placed in Category 5 of the Texas Integrated Report based on the primary criteria. Instead, the listing can be deferred until a use-attainability analysis of the water body is conducted to establish the appropriate aquatic life use. If the water body is not meeting the primary criteria for the aquatic life use that is determined to be appropriate, or if the use-attainability analysis has not been completed and submitted to EPA for review within the next two submissions of Texas' Integrated Report (approximately four years), then the water body is listed as impaired.~~] When the appropriate aquatic life use as determined by the use-attainability study is less stringent than the presumed high use, then the appropriate aquatic life use and dissolved oxygen criteria are listed in Appendix D of §307.10 of this title after approval by EPA. [~~Water bodies that are not meeting a presumed high aquatic life use are identified and subject to notice and public comment during the development of Texas' Integrated Report.~~]

(g) Additional parameters. Assessment of narrative criteria parameters must be performed in accordance with the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

§307.10. Appendices A - G.

The following appendices are integral components of this chapter of the Texas Surface Water Quality Standards.

(1) Appendix A - Site-specific Uses and Criteria for Classified Segments:
Figure: 30 TAC §307.10(1)
[~~Figure: 30 TAC §307.10(1)~~]

(2) Appendix B - Sole-source Surface Drinking Water Supplies:
Figure: 30 TAC §307.10(2)
[~~Figure: 30 TAC §307.10(2)~~]

(3) Appendix C - Segment Descriptions:
Figure: 30 TAC §307.10(3)
[~~Figure: 30 TAC §307.10(3)~~]

(4) Appendix D - Site-specific Uses and Criteria for Unclassified Water Bodies:
Figure: 30 TAC §307.10(4)
[~~Figure: 30 TAC §307.10(4)~~]

(5) Appendix E - Site-specific Toxic Criteria:
Figure: 30 TAC §307.10(5)
[~~Figure: 30 TAC §307.10(5)~~]

(6) Appendix F - Site-specific Nutrient Criteria for Selected Reservoirs:
Figure: 30 TAC §307.10(6)
[~~Figure: 30 TAC §307.10(6)~~]

(7) Appendix G - Site-specific Recreational Uses and Criteria for Unclassified Water Bodies:
Figure: 30 TAC §307.10(7)
[~~Figure: 30 TAC §307.10(7)~~]

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 August 28, 2013.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT
SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §§1.82, 1.85 - 1.87

The Texas Department of Transportation (department) proposes amendments to §1.82, concerning Statutory Advisory Committee Operations and Procedures, §1.85, concerning Department Advisory Committees, §1.86, concerning Corridor Advisory Committees, and §1.87, concerning Corridor Segment Advisory Committees.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments are the result of the Texas Transportation Commission's (commission) review of the need to continue the existence of the commission's advisory committees.

Amendments to §1.82(i) revise the sunset dates of commission advisory committees that are created by statute. Section 1.82 currently provides that each statutory advisory committee is abolished December 31, 2013. This sunset date was established under Government Code, §2110.008, which authorizes

a state agency to establish by rule a date on which advisory committees will automatically be abolished unless continued. The commission determines that the continued existence of its statutory advisory committees is necessary for improved communication between the department and the public. Therefore, §1.82(i) is amended to revise the sunset date to December 31, 2015.

Amendments to §1.85 delete subsection (a)(4), which relates to the TxDOT Strategic Research Program Advisory Committee, because that committee is not currently used by the department. In addition, its function and membership overlaps other advisory committees and working groups. Current paragraph (5) is redesignated as paragraph (4).

Amendments to §1.85 change the date that advisory committees created under that section are abolished. Section 1.85 provides for the creation of advisory committees by the commission and provides the operating procedures for those committees. Section 1.85(c) currently provides a December 31, 2013, sunset date, which was established in accordance with Government Code, §2110.008. The commission determines that each existing advisory committee created under §1.85, other than the TxDOT Strategic Research Program Advisory Committee, is necessary for improved communication between the department and the public. Therefore, amendments to §1.85(c) extend the sunset date to December 31, 2015.

Amendments to §1.86 similarly change the date that advisory committees created under that section are abolished. Section 1.86(e) currently provides that each advisory committee created under that section is abolished December 31, 2013. This sunset date was established in accordance with Government Code, §2110.008. The commission determines that each existing corridor advisory committee is necessary for improved communication between the department and the public. Therefore, amendments to §1.86(e) change the sunset date to December 31, 2015.

Section 1.87 recognizes the creation of corridor segment advisory committees for the I-35 corridor and the I-69 corridor and authorizes the creation of a segment advisory committee for any other corridor. The Transportation Planning & Programming Division of the department has determined that corridor segment advisory committees are no longer needed for the I-35 and I-69 corridors. Amendments to subsection (a) remove the references to those advisory committees. Section 1.87(e) currently provides that each corridor segment advisory committee is abolished December 31, 2013. This sunset date was established in accordance with Government Code, §2110.008. Amendments to §1.87(e) provide that corridor segment advisory committees for the I-35 corridor and the I-69 corridor are abolished December 31, 2013, but extend the sunset date for any newly created corridor segment advisory committee to December 31, 2015. Specifying a date certain in this section is consistent with other sections that authorize the creation of department advisory committees and assures that the department will review the advisory committee's work and usefulness and determine whether an extension of its existence is necessary.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Jeff Graham, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Graham has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be accuracy of the rules and improved communication between the department and the public. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §1.82 and §§1.85 - 1.87 may be submitted to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "§§1.82, 1.85-1.87." The deadline for receipt of comments is 5:00 p.m. on October 15, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.117, which provides the commission with the authority to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction, and Government Code, §2110.008, which provides that, if a state agency committee designates the date on which an advisory committee will automatically be abolished or changes such a date, the designation or change must be by rule.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2110, and Transportation Code, §201.117.

§1.82. Statutory Advisory Committee Operations and Procedures.

(a) Applicability. This section applies to statutory advisory committees and governs the operation of statutory advisory committees unless it is superceded by a specific provision in §1.84 of this subchapter (relating to Statutory Advisory Committees).

(b) Election of officers and terms of members.

(1) Unless otherwise specified with regard to a particular committee, each committee shall elect a chair and vice-chair by majority vote of the members of the committee. The chair and vice-chair shall each be elected for a term of not less than one year and not more than two years. Once elected, the chair and vice-chair may stand for reelection, without limit on the number of consecutive terms.

(2) Members shall serve on an advisory committee until new members are appointed.

(c) Meetings.

(1) Meeting requirements. The office designated for an advisory committee under subsection (f) of this section shall submit to the Office of the Secretary of State notice of a meeting of the advisory

committee at least 10 days before the date of the meeting. The notice must provide the date, time, place, and subject of the meeting. A meeting of an advisory committee must be open to the public. An advisory committee will follow the agenda set for each meeting under paragraph (2) of this subsection. Filing of notice of meetings with the Office of the Secretary of State shall be coordinated through the department's Office of General Counsel.

(2) Scheduling of meetings. Meeting dates, times, places, and agendas will be set by the office designated under subsection (f) of this section. Any committee member may suggest the need for a meeting or an agenda item, provided that the committee may only discuss items that are within the committee's and the department's jurisdiction. The office designated under subsection (f) of this section will provide notice of the time, date, place, and purpose of meetings to the members, by mail, email, telephone or any combination of the three, at least 10 calendar days in advance of each meeting. All meetings must take place in Texas and must be held in a location that is readily accessible to the general public.

(3) Quorum. A majority of the membership of an advisory committee, including the chairman, constitutes a quorum. The committee may act only by majority vote of the members present at the meeting.

(4) Removal. A committee member may be removed at any time without cause by the person or entity that appointed the member or by that person's or entity's successor.

(5) Parliamentary procedure. Parliamentary procedures for all committee meetings shall be in accordance with the latest edition of Robert's Rules of Order, except that the chair may vote on any action as any other member of the committee, and except to the extent that Robert's Rules of Order are inconsistent with any statute or this subchapter.

(6) Record. Minutes of all committee meetings shall be prepared and filed with the commission. The complete proceedings of all committee meetings must also be recorded by electronic means.

(7) Public information. All minutes, transcripts, and other records of the advisory committees are records of the commission and as such may be subject to disclosure under the provisions of Government Code, Chapter 552.

(d) Reimbursement. The department may, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

(e) Conflict of interest. Advisory committee members are subject to the same laws and policies governing ethical standards of conduct as those for commission members and employees of the department.

(f) Administrative support. For each advisory committee, the executive director will designate an office of the department that will be responsible for providing any necessary administrative support essential to the functions of the committee.

(g) Advisory committee recommendations. In developing department policies, the commission will consider the recommendations submitted by advisory committees.

(h) Manner of reporting.

(1) The office designated under subsection (f) of this section shall, in writing, report to the commission an official action of a statutory advisory committee, including any advice and recommendations, prior to commission action on the issue. The chair of the advisory committee or the chair's designee will also be invited by the department to appear before the commission prior to commission action on a posted agenda item to present the committee's advice and recommendations.

(2) In the event a written report cannot be furnished to the commission prior to commission action, the report may be given orally, provided that a written report is furnished within 10 days of commission action.

(i) Duration. Except as otherwise specified in this subchapter, each statutory advisory committee is abolished December 31, 2015 [~~2013~~], unless the commission amends its rules to provide for a different date.

§1.85. Department Advisory Committees.

(a) Creation.

(1) Project advisory committees.

(A) Purpose. The executive director may authorize a district engineer to create, by written order, an ad hoc project advisory committee composed of the following members as may be deemed appropriate by the district engineer: department staff; affected property owners and business establishments; technical experts; professional consultants representing the department; and representatives of local governmental entities, the general public, chambers of commerce, and the environmental community. A project advisory committee shall serve the purpose of facilitating, evaluating, and achieving support and consensus from the affected community and governmental entities in the initial stages of a transportation project. Advice and recommendations of a committee provide the department with an enhanced understanding of public, business, and private concerns about a project from the development phase through the implementation phase, thus facilitating the department's communications and traffic management objectives, resulting in a greater cooperation between the department and all affected parties during project development and construction.

(B) Duties. A project advisory committee shall:

(i) maintain community and local government communication; and

(ii) respond in a timely fashion to affected parties' concerns about project development and construction.

(C) Manner of reporting. A project advisory committee shall report its advice and recommendations to the district engineer.

(D) Duration. A project advisory committee may be abolished at any stage of project development, but in no event may a committee continue beyond completion of the project.

(2) Rulemaking advisory committees.

(A) Purpose. The commission, by order, may create ad hoc rulemaking advisory committees pursuant to Government Code, Chapter 2001, §2001.031, for the purpose of receiving advice from experts, interested persons, or the general public with respect to contemplated rulemaking.

(B) Duties. A rulemaking advisory committee shall provide advice and recommendations with respect to a specific contemplated rulemaking.

(C) Manner of reporting. A rulemaking advisory committee shall report its advice and recommendations to the division responsible for the development of the rules.

(D) Duration. A rulemaking committee shall be abolished upon final adoption of rules by the commission.

(3) Bicycle Advisory Committee.

(A) Purpose. The purpose of the Bicycle Advisory Committee is to advise the commission on bicycle issues and matters related to the Safe Routes to School Program. By involving representatives of the public, including bicyclists and other interested parties, the department helps ensure effective communication with the bicycle community, and that the bicyclist's perspective will be considered in the development of departmental policies affecting bicycle use, including the design, construction and maintenance of highways. The committee will also provide recommendations to the department on the Safe Routes to School Program.

(B) Duties. The committee shall:

(i) in accordance with Transportation Code, §201.9025, advise and make recommendations to the commission on the development of bicycle tourism trails;

(ii) provide recommendations on the selection of projects under Chapter 25, Subchapter I of this title (relating to Safe Routes to School Program); and

(iii) review and make recommendations on items of mutual concern between the department and the bicycling community.

(C) Manner of reporting. The committee shall report its advice and recommendations to the commission, except for matters relating to the Safe Routes to School Program. Under the Safe Routes to School Program the committee shall reports its recommendations to the director of the division responsible for administering the program.

~~[(4) TxDOT Strategic Research Program Advisory Committee.]~~

~~[(A) Purpose. The TxDOT Strategic Research Program Advisory Committee is created. The purpose of the committee is to make recommendations to the department concerning the selection of research topics and the direction and facilitation of strategic research to prepare the department for the transportation challenges it is likely to face over the next 30 years. The commission, by order, will appoint the members of the committee. The committee may be composed of members who are: private sector executives whose companies are major users of the state's multimodal transportation system; private sector finance or international business experts; technical experts with a broad base of transportation knowledge in one or more applicable fields, such as mobility, safety, economics, and demographics; and individuals in the public or private sector who have national standing and credibility in the transportation field.]~~

~~[(B) Duties. The committee shall advise and make recommendations to the department regarding:]~~

~~*[(i)* the selection of strategic research topics relating to challenges the department is likely to face over the next 30 years; and]~~

~~*[(ii)* the selection of appropriate research entities, including, but not limited to, universities, research institutions, or consultants to carry out the research.]~~

~~[(C) Liaison. The committee may appoint a member of the committee as a liaison for a specified research project. The liaison will meet with researchers responsible for the project on a regular basis and report progress on the project to the committee.]~~

~~[(D) Manner of reporting. The committee shall report its advice and recommendations to the executive director or a department employee designated by the executive director and shall make reports to the commission, as requested.]~~

(4) [~~(5)~~] Freight Advisory Committee.

(A) Purpose. The purpose of the Freight Advisory Committee is to serve as a forum for discussion regarding transportation decisions affecting freight mobility and promote the sharing of information between the private and public sectors on freight issues. The committee's advice and recommendations will provide the department with a broad perspective regarding freight transportation matters and assist in identifying potential freight transportation facilities that are critical to the state's economic growth and global competitiveness.

(B) Duties. The committee shall:

(i) provide advice regarding freight-related priorities, issues, projects and funding needs;

(ii) make recommendations regarding the creation of statewide freight transportation policies and performance measures;

(iii) make recommendations regarding the development of a comprehensive and multimodal statewide freight transportation plan; and

(iv) communicate and coordinate regional priorities with other organizations as requested by the department.

(C) Manner of reporting. The committee shall report its advice and recommendations to the executive director or a department employee designated by the executive director and shall make reports to the commission as requested.

(b) Operating procedures.

(1) Membership. Except as otherwise specified in this section, an advisory committee shall be composed of not more than 24 members to be appointed by the office or official to whom the committee is to report. When applicable to the purpose and duties of the committee, the membership shall provide a balanced representation between:

(A) industries or occupations regulated or directly affected by the department; and

(B) consumers of services provided either by the department or by industries or occupations regulated by the department.

(2) Meetings.

(A) An advisory committee shall meet once a calendar year and at such other times as requested by the office to which it reports.

(B) A majority of the membership of an advisory committee constitutes a quorum. A committee may take formal action only by majority vote of its membership.

(3) Officers. Each committee shall elect a chair and vice-chair by majority vote of the members of the committee.

(c) Duration. Except as otherwise specified in this section, a committee created under this section is abolished December 31, 2015 [~~2013~~], unless the commission amends its rules to provide for a different date.

(d) Reimbursement. The department may, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

§1.86. Corridor Advisory Committees.

(a) Purpose. The commission by order will create advisory committees to assist the department in the transportation planning process for the Interstate Highway 35 corridor and in the corridor planned as part of Interstate Highway 69 and may create an advisory committee for any other corridor. The purpose of an advisory committee is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of transportation improvements in the corridor for which it is created and in the establishment of development plans for that corridor. An advisory committee's advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the corridor for which it is created, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

(b) Membership. An advisory committee may be composed of members of the following groups as deemed appropriate by the commission: affected property owners and owners of business establishments; technical experts; representatives of local governmental entities; members of the general public; economic development officials; chambers of commerce officials; members of the environmental community; department staff; and professional consultants representing the department.

(c) Duties. An advisory committee shall report to the executive director its advice and recommendations on transportation improvements to be made in the corridor for which it is created, including facilities to be included in a development plan for that corridor and upgrades and other improvements to be made to existing facilities located in that corridor, and on other corridor level planning and development matters as requested by the department. The corridor advisory committee may also provide information to, coordinate with, or request information relating to the planning and development of a segment of the corridor from a corridor segment advisory committee established under §1.87 of this subchapter (relating to Corridor Segment Advisory Committees). In developing advice and recommendations, an advisory committee will evaluate economic, political, societal, and demographic population trends affecting transportation, and will consider existing facilities, upgrades to existing facilities, new or planned facilities, multimodal solutions, and available financing options.

(d) Additional requirements. An advisory committee is subject to the requirements for operating procedures and reimbursement of expenses applicable to a department advisory committee under §1.85 of this subchapter (relating to Department Advisory Committees).

(e) Duration. An advisory committee created under this section is abolished December 31, 2015 [~~2013~~], unless the commission amends its rules to provide for a different date.

§1.87. Corridor Segment Advisory Committees.

(a) Purpose. The commission by order may [~~will~~] create a corridor segment advisory committee to assist the department in the transportation planning process for [~~the Interstate Highway 35 corridor and in the corridor planned as part of Interstate Highway 69 and may create an advisory committee~~] for any highway [~~other~~] corridor. The purpose of an advisory committee is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of transportation improvements in the segment of a corridor for which it is created and in the establishment of development plans for that segment. An advisory committee's advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the segment for which it is created, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

(b) Membership. A corridor segment advisory committee consists of the following members:

(1) one member appointed by the county judge of each county in which the proposed segment may be located, representing the general public within the county;

(2) one member appointed by each metropolitan planning organization within whose boundaries all or part of the proposed segment may be located, representing the general public within the metropolitan planning organization;

(3) additional members representing the general public within cities designated by the commission, in which all or part of a proposed segment may be located, each of whom will be appointed by the mayor of a designated city; and

(4) additional members, each of whom:

(A) will represent, and be appointed by the governing body of, a port, chamber of commerce, economic development council or corporation, or other organization that has an interest in transportation, within whose service area all or part of a proposed segment may be located and that is designated by the commission to appoint a member of the committee; or

(B) is an individual who resides or has a business in the area in which the segment may be located, has an interest in transportation, and is appointed to the committee by the commission.

(c) Duties. An advisory committee shall report to the executive director its advice and recommendations on transportation improvements to be made in the segment of a corridor for which it is created, including facilities to be included in a development plan for that segment and upgrades and other improvements to be made to existing facilities located in that segment, and other segment level planning, development, and financing matters as requested by the department. A corridor segment advisory committee may provide information to, coordinate with, or request information from a corridor advisory committee created under §1.86 of this subchapter (relating to Corridor Advisory Committees). In developing advice and recommendations, a corridor segment advisory committee will evaluate economic, political, societal, and demographic population trends affecting transportation, and will consider existing facilities, upgrades to existing facilities, new or planned facilities, multimodal solutions, and available financing options.

(d) Additional requirements. A corridor segment advisory committee is subject to the requirements for operating procedures applicable to a department advisory committee under §1.85 of this subchapter (relating to Department Advisory Committees).

(e) Duration. A corridor segment advisory committee may be abolished at any time by the commission, but in no event may a committee continue beyond completion of the segment for which the committee is created. Except as otherwise specified in this paragraph, a committee created under this section is abolished December 31, 2015 [~~2013~~], unless the commission amends its rules to provide for a different date. The corridor segment advisory committees established for the Interstate Highway 35 corridor and the Interstate Highway 69 corridor are abolished December 31, 2013.

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

Filed with the Office of the Secretary of State on August 29, 2013.

TRD-201303638
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 463-8683

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CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

SUBCHAPTER O. COUNTY TRANSPORTATION INFRASTRUCTURE FUND GRANT PROGRAM

43 TAC §§15.180 - 15.196

The Texas Department of Transportation (department) proposes new §§15.180 - 15.196, new Subchapter O, County Transportation Infrastructure Fund Grant Program, concerning the financing and construction of transportation projects.

EXPLANATION OF PROPOSED NEW SECTIONS

Senate Bill 1747, 83rd Legislature, Regular Session, 2013, added new Transportation Code, Chapter 256, Subchapter C, §§256.101 - 256.106 establishing a transportation infrastructure fund and directing the department to administer a grant program from the fund to provide funding to counties for transportation infrastructure projects located in areas of the state affected by increased oil and gas production. In order to participate in the grant program, Senate Bill 1747 requires a county to establish a county energy transportation reinvestment zone and advisory board under new Transportation Code, §222.1071 and §222.1072, and submit a road condition report under new Transportation Code, §251.018, that includes the primary cause of any road, culvert, or bridge degradation.

New Subchapter O is required to implement the grant program established under Senate Bill 1747, which takes effect September 1, 2013.

New §15.180, concerning Purpose, states that the purpose of the new subchapter is to establish and administer a grant program to provide funding to counties for transportation infrastructure projects located in areas of the state affected by increased oil and gas production. The subchapter sets forth: procedures for submission and review of application, the allocation of funds to eligible counties, and procedures for reimbursement to counties of allowable costs incurred under the grant program.

New §15.181, concerning Definitions, defines various terms used within Subchapter O. The terms are defined to provide a clear understanding of their usage and to incorporate statutory language used in definitions contained in Transportation Code, §256.101.

The definitions of (1) "Commission", (2) "Department", (3) "District", and (4) "Executive director", are consistent with the definitions used in other subchapters of Chapter 15 for describing the governance and organizational structure of the department.

The definitions of (5) "Fund", (6) "Transportation infrastructure project", and (7) "Weight tolerance permit", are identical to the definitions contained in Transportation Code, §256.101.

The definition of (8) "Well completion", contains the statutory language included in Transportation Code, §256.101(4), but further identifies the well operator's initial submission of information to the Railroad Commission as the specific event for purposes of counting a well completion during a fiscal year in the allocation formula under new §15.185(d). The additional clarification was provided by the Railroad Commission.

New §15.182, concerning Eligibility, describes the requirements for a county to be eligible for a grant from the fund. To be eligible a county must: be entirely or partially in an area affected by increased oil and gas production, create a county energy transportation reinvestment zone, and create an advisory board for the county energy transportation reinvestment zone. The eligibility requirements of this section are mandated by Transportation Code, §§222.1072, 256.103, and 256.104.

New §15.183(a), concerning amount, requires a county to provide matching funds of at least 20 percent of the amount of the county's total grant award. However, if the department determines a county is economically disadvantaged as defined by Transportation Code, §222.053, the county is only required to provide matching funds of at least 10 percent of the county's total grant award. Subsection (b), concerning cash match, requires that the matching funds provided by a county must be in cash and may be from any source other than the department. The percentage of matching funds is mandated by Transportation Code, §256.105, and the cash requirement is consistent with the department's customary matching requirements for other shared funding programs to ensure that the recipient entity has sufficient funding available to develop and complete the designated project or projects.

New §15.184(a), concerning mandatory award, states that the department will award a grant to all eligible counties that submit a valid application in accordance with the procedures established by the department under §15.188 of the new subchapter. Subsection (b), concerning amount, further provides that the department will determine the amount of the award allocated to a recipient county based on the allocation formulas and distribution procedures as determined by §15.185 and §15.186. This section expresses the mandate of Senate Bill 1747 that a county is entitled to an amount calculable by formula if it meets the statutory eligibility requirements. The department does not have discretion to deny or modify the award if the eligibility requirements are met.

New §15.185, concerning Allocation to Counties, establishes the formula by which grant funds will be distributed to applicant counties during a state fiscal year, which begins on September 1 and ends on August 31. Allocation involves a two-step process: first, the total pool of money available for grant distribution is divided into four categories; and second, each county that applies for a grant will be allocated funds within each category based on a defined percentage relationship for that category. The allocation formula is mandated by Transportation Code, §256.103.

New §15.185(a), concerning allocation formula, sets forth the allocation percentages for each of the four categories for which the total amount of funds awarded from the fund will be distributed during a fiscal year. The allocation of all funds will be distributed as follows: (1) 20 percent will be allocated according to the weight tolerance permits ratio, (2) 20 percent will be allocated according to the oil and gas production taxes ratio, (3) 50 percent will be allocated according to the well completion ratio, and (4) 10 percent will be allocated according to the volume of oil and gas waste injected ratio.

New §15.185(b), concerning weight tolerance permits ratio, sets forth the allocation formula that the department will use to calculate the amount of grant funds a recipient county will receive based on weight tolerance permits issued in the preceding state fiscal year. To determine the amount, the department will divide the total number of weight tolerance permits issued in the preceding state fiscal year for the recipient county, as determined by the Texas Department of Motor Vehicles, by the sum of all weight tolerance permits for all counties that submit valid applications and will receive grant funds that fiscal year. The resulting percentage ("quotient") will be multiplied by the total dollar amount allocated statewide for the weight tolerance permits category. The comparative ratio is based on the eligible counties that submit a valid application - not on all 254 counties.

New §15.185(c), concerning oil and gas production taxes ratio, sets forth the allocation formula that the department will use to calculate the amount of grant funds a recipient county will receive based on the total amount of oil and gas production taxes collected in the county the preceding state fiscal year. To determine the amount, the department will divide the total amount of oil and gas production taxes collected in the county the preceding state fiscal year, as determined by the Texas Comptroller of Public Accounts, by the sum of all oil and gas production taxes collected from all counties that submit valid applications and will receive grant funds that fiscal year. The resulting percentage ("quotient") will be multiplied by the total dollar amount allocated statewide for that fiscal year for the oil and gas production taxes category. The comparative ratio is based on the eligible counties that submit a valid application - not on all 254 counties.

New §15.185(d), concerning well completion ratio, sets forth the allocation formula that the department will use to calculate the amount of grant funds a recipient county will receive based on the number of well completions in the preceding state fiscal year. To determine the amount, the department will divide the total well completions of the preceding state fiscal year for the recipient county, as determined by the Railroad Commission of Texas, by the sum of all well completions for all counties that submit valid applications and will receive grant funds that fiscal year. The resulting percentage ("quotient") will be multiplied by the total dollar amount allocated statewide for the well completions category. The comparative ratio is based on the eligible counties that submit a valid application - not on all 254 counties.

New §15.185(e), concerning oil and gas waste injected ratio, sets forth the allocation formula that the department will use to calculate the amount of grant funds a recipient county will receive based on the total volume of oil and gas waste injected in the county the preceding state fiscal year. To determine the amount, the department will divide the total volume of oil and gas waste injected in the county the preceding state fiscal year, as determined by the Railroad Commission of Texas, by the sum of all oil and gas waste injected in all counties that submit valid applications and will receive grant funds that fiscal year. The resulting percentage ("quotient") will be multiplied by the total dollar amount allocated statewide for the oil and gas waste injected category. The comparative ratio is based on the eligible counties that submit a valid application - not on all 254 counties.

New §15.186, concerning Allocation of Excess, requires the department to reallocate to other applicants all funds that were allocated to an individual applicant county in excess of that county's original request. The department will total all excess amounts and will reallocate those funds in compliance with the formulas for the initial allocation, except that a county from which excess funds were taken for reallocation will not receive any additional funds in the reallocation process. This section ensures that a county does not receive an allocation for more funds than were identified as needed in its grant application, and allows those excess grant funds to go to other applicant counties which have submitted estimated costs for listed transportation infrastructure projects that are greater than the amount the county would otherwise receive from the initial calculation. This two-step process serves to maximize award amounts for those counties that can expedite repair to damaged infrastructure.

New §15.187(a), concerning request for applications, allows the commission to designate a specified period of time for which the department will accept grant applications under the program, and prescribe applicable conditions for submission of the applications. This process gives all interested counties the opportunity to submit applications at the same time and receive an award based on the relative statewide percentages of all of the applicant counties. The process will maximize award amounts for the counties that are prepared to move forward with identified transportation infrastructure projects.

New §15.187(b), concerning notice, requires the department to publish notice of the request for applications on the department's website and provide written notice to the county judge of each county in the state. The notice must specify the period of time during which a county may submit applications, the estimated amount of money available in the grant fund that is available for allocation during the designated time period, and any additional conditions for submission of a grant application. The notice provisions are designed to expedite actual notice to the counties.

New §15.188(a), concerning application form, requires a county to submit a grant application to the department electronically using the department's automated system designated for the grant program. It is a county's responsibility to obtain computer and Internet access to electronically submit a grant application, but upon request by a county, it will have access to the department's computer system at any district office for purposes of submitting a grant application. The electronic format allows the department to streamline and expedite the application process and create an application form that will generate information in a uniform manner for all applicant counties. This subsection also defines a "valid application" as one that is submitted during the designated time period and satisfies all of §15.188 application requirements.

New §15.188(b), concerning plan requirements, requires an application to include a plan that contains the following: (1) a prioritized list of transportation infrastructure projects to be funded by the grant; (2) a description of the scope of each listed transportation infrastructure project which includes: a clear and concise description of the proposed work, a map delineating project location and termini, an implementation plan, including a schedule of proposed activities, an estimate of project costs, the project funding sources, and other information required by the department; (3) identification of matching funds; and (4) identification of other potential sources of funding to maximize resources available for the listed transportation infrastructure projects. These plan requirements are necessary to comply with the application process as mandated by Transportation Code, §256.104.

New §15.188(c), concerning additional submissions, describes documentation and reports that a county must submit in addition to the application form itself. Additional requirements include: a road condition report described by Transportation Code, §251.018, made by the county for the previous year; a copy of the order establishing a county energy transportation reinvest-

ment zone in the county; and documentation evidencing the creation of an advisory board for the county energy transportation reinvestment zone. The additional submissions required by the subsection are necessary to comply with Transportation Code, §222.1072 and §256.104.

New §15.189(a), concerning preliminary review, requires the department, within 14 days of its receipt of a timely application, to conduct a preliminary review to identify any deficiencies in the application. If the department identifies any deficiencies, the department will notify the county in writing, and allow the county to remedy any deficiencies on or before the later of the deadline for submitting applications or the 14th day after the date of receipt of a deficiency notice. When the department deems the application complete, the department will then so notify the applicant county in writing. This subsection attempts to ensure that a county is not denied access to a grant based on a procedural error, omission, or misunderstanding.

New §15.189(b), concerning department review, requires the department to review all valid applications within 31 days of receipt of an application. Upon written notification to an applicant by the department, the department may obtain a one-time extension of 29 days if additional time is needed to evaluate the applications. These review time periods are mandated by Transportation Code, §256.104.

New §15.189(c), concerning additional considerations, requires the department to: seek other additional potential sources of funding for a transportation infrastructure project to be funded with the requested grant, consult related transportation planning documents to improve project efficiency, and work effectively in partnership with the county. This provision complies with requirements of Transportation Code, §256.104(b).

New §15.190, concerning Notice of Award, requires the department to provide written notice to each applicant describing the amount of grant funds awarded to the county, or provide notice denying the applicant's application for a grant under the program. A decision denying a grant application must include the reasons for the denial. This section is consistent with other grant programs administered by the department and provides each applicant county with a definitive notice concerning the status of its request.

New §15.191(a), concerning requirement; content, requires a county, prior to receiving a grant from the fund, to enter into an agreement with the department obligating the county to: place the project on the county road system, if is a county road not already on the system; expend funds received only on allowable costs as provided in §15.192; comply with all applicable federal, state, and local environmental laws and regulations and permitting requirements; maintain the road after completion of the proposed work if it is a county road; and, if a county's listed transportation infrastructure project is located on the state highway system, the county must contribute to the department an amount from the awarded grant and the county's matching funds, equal to the allowable costs incurred by the department for that project. The purpose of an agreement under this section is to clearly establish the rights and responsibilities of both parties with regard to the performance of work and payment of grant funds. Such agreements are customary for similar grant programs administered by the department and ensure grant funds are expended only for the statutory purpose allowed under Transportation Code, Chapter 256, Subchapter C.

New §15.191(b), concerning amendment to the agreement, requires any modifications to a grant agreement between the county and the department to be in writing and executed jointly by the executive director and the county. This subsection expressly allows a county to modify a grant application project list by adding transportation infrastructure projects to the list or by changing the order of priority of the projects previously on the list. The county must submit the request to the department and include with the request, the type of information required in the original application. This subsection allows flexibility of project selection for a county, while at the same time ensuring grant funds are expended only for the statutory purpose allowed under Transportation Code, Chapter 256, Subchapter C.

New §15.192(a), concerning allowable costs, provides that a county may only be reimbursed from the fund for allowable costs related to the transportation infrastructure projects of the county for which a grant was awarded. Allowable costs are described as the necessary project related expenditures properly attributable to the work performed, and may include a portion or all of the administrative costs of a county energy transportation reinvestment zone not to exceed $250,000. A request for reimbursement must be submitted by a county using forms and procedures specified by the department and reimbursements will be based on actual direct and related indirect costs incurred after the award of a grant. The department will make intermediate payments upon request of a county, not more often than monthly. This subsection is consistent with the requirements and conditions of other grant programs administered by the department, and allows the department to effectively and efficiently monitor compliance with the proper expenditure of grant funds. The department has a responsibility to preserve the integrity of the grant program and to manage and safeguard the public treasury.

New §15.192(b), concerning audit, authorizes representatives of the department and other entities of the State of Texas and, if applicable, the federal government, to audit all county cost records and accounts relating to a project that receives money from a grant for up to three years after the date a final payment is received by the county. This subsection allows the department to monitor compliance and ensure grant funds are expended only for the statutory purpose allowed under Transportation Code, Chapter 256, Subchapter C. The department has a responsibility to preserve the integrity of the grant program and to manage and safeguard the public treasury.

New §15.193, concerning Certification of Completion, requires a county to submit to the department a written certification within 60 days after completion of a listed project or listed projects for which a grant was awarded. The certification must state that the county has complied with all requirements of the grant, including a certification that the project has been constructed in accordance with all applicable construction requirements. The certification must also describe the allowable costs for the project and the amount reimbursed from the fund. This section ensures grants funds are spent only on transportation infrastructure projects as required by Transportation Code, §256.102, and Transportation Code, Chapter 256, Subchapter C, generally. The department has a responsibility to preserve the integrity of the grant program and to manage and safeguard the public treasury.

New §15.194, concerning Use of Unexpended Funds, permits a county to use the remaining unexpended balance of a grant for any transportation project in the county, if a county has completed all projects for which the original grant was awarded, and

the county has not expended all of its awarded funds. To qualify to use the unexpended grant funds a county must, within one year of filing a certification of completion of the original project or projects, submit to the department a proposed amendment to the original agreement, identifying the additional project or projects along with all other project information required in an original application. This section allows a county to fully utilize its allocated grant funds for construction of any other transportation project in the county. The transportation project does not have to be related to degradation caused by the oil and gas industry.

New §15.195, concerning Enforcement, allows the executive director to prohibit a county from participating in the grant program for non-compliance with one or more material requirements of the grant program, and to continue the prohibition until the executive director determines that the county has complied with all material requirements of the program. This section also allows the executive director to remove a specific project from participation in the program if work on the project is not commenced within three years after the date of the executed agreement between the county and the department or within another reasonable period of time that is agreed to by the department and the county. The enforcement mechanism is necessary to ensure grant funds are expended only for the statutory purpose allowed under Transportation Code, Chapter 256, Subchapter C. The department has a responsibility to preserve the integrity of the grant program and to manage and safeguard the public treasury.

New §15.196, concerning Reimbursement, authorizes the department to seek reimbursement of all grant money received by a county for a specific transportation infrastructure project if the county commences performance but fails to complete the project. Any funds recovered from a county will be deposited to the credit of the grant fund. This subsection is consistent with requirements and conditions of other similar grant programs administered by the department and the federal government. The department has a responsibility to preserve the integrity of the grant program and to manage and safeguard the public treasury.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the new sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections. The new sections provide for management of a grant program established by Transportation Code, Chapter 256, Subchapter C, to transfer additional funding to counties for transportation infrastructure projects damaged by the exploration, development, or production of oil or gas. The allocated state funds should have a positive fiscal impact on the recipient counties, but the extent of that impact cannot be quantified.

Mark Marek, Director, Design Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

PUBLIC BENEFIT AND COST

Mr. Marek has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the new sections will be the construction, reconstruction, and maintenance of roads, bridges, and culverts damaged by increased oil and gas production. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §§15.180 - 15.196 may be submitted to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "15.180-15.196." The deadline for receipt of comments is 5:00 p.m. on October 15, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed new sections, or is an employee of the department.

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §256.103, which give the department rule making authority to adopt rules to implement the transportation infrastructure fund grant program.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 256, Subchapter C; and Transportation Code, §§222.1071, 222.1072, and 251.018.

§15.180. Purpose.

Transportation Code, Chapter 256, Subchapter C, requires the department to establish and administer a grant program that provides funding to counties for transportation infrastructure projects located in areas of the state affected by increased oil and gas production. This subchapter sets forth the procedures for submission and review of applications, the allocation of funds to eligible counties, and the reimbursement to counties of allowable costs incurred under the grant program.

§15.181. Definitions.

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

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) District--One of the geographic areas into which the department is divided in order to conduct its primary work activities.

(4) Executive director--The executive director of the department, or the executive director's designee.

(5) Fund--The transportation infrastructure fund established under Transportation Code, Chapter 256, Subchapter C.

(6) Transportation infrastructure project--The planning for, construction of, reconstruction of, or maintenance of transportation infrastructure, including roads, bridges, and culverts, intended to alleviate degradation caused by the exploration, development, or production of oil or gas. The term includes the lease or rental of equipment used for road maintenance.

(7) Weight tolerance permit--A permit issued under Transportation Code, Chapter 623 authorizing a vehicle to exceed maximum legal weight limitations.

(8) Well completion--The completion, reentry, or recompletion of an oil or gas well as documented by the well operator's initial submission to the Railroad Commission of Texas of a report containing that information.

§15.182. Eligibility.

To be eligible for a grant from the fund, a county must:

(1) be entirely or partially in an area affected by increased oil and gas production;

(2) create a county energy transportation reinvestment zone under Transportation Code, §222.1071; and

(3) create an advisory board under Transportation Code, §222.1072 for the county energy transportation reinvestment zone.

§15.183. Matching Funds.

(a) Amount. To receive money from the fund a county must provide matching funds in an amount at least equal to:

(1) 20 percent of the amount of the grant; or

(2) if the county is an economically disadvantaged county, as defined in Transportation Code, §222.053, 10 percent of the amount of the grant.

(b) Cash match. The matching funds must be cash and may be from any source other than the department.

§15.184. Award.

(a) Mandatory award. The department will award a grant from the fund to each eligible county that submits a valid application in accordance with §15.188 of this subchapter (relating to Application Procedure).

(b) Amount. The department will determine the amount of the award in accordance with the allocations under §15.185 and §15.186 of this subchapter (relating to Allocation to Counties and Allocation of Excess, respectively) and will pay the amount as described by §15.192 of this subchapter (relating to Payment of Money).

§15.185. Allocation to Counties.

(a) Allocation formula. Of the total amount awarded from the fund during a state fiscal year:

(1) 20 percent will be allocated under subsection (b) of this section according to the weight tolerance permits ratio;

(2) 20 percent will be allocated under subsection (c) of this section according to the oil and gas production taxes ratio;

(3) 50 percent will be allocated under subsection (d) of this section according to the well completion ratio; and

(4) 10 percent will be allocated under subsection (e) of this section according to the volume of oil and gas waste injected ratio.

(b) Weight tolerance permits ratio. The amount allocated to a county under subsection (a)(1) of this section in a fiscal year is determined by:

(1) dividing the weight tolerance permits issued in the preceding state fiscal year for that county, as determined by the Texas Department of Motor Vehicles, by the weight tolerance permits issued in the preceding state fiscal year for all counties that will receive money under subsection (a)(1) of this section in that year; and

(2) multiplying the quotient determined under paragraph (1) of this subsection by the total amount allocated under subsection (a)(1) of this section.

(c) Oil and gas production taxes ratio. The amount allocated to a county under subsection (a)(2) of this section in a state fiscal year is determined by:

(1) dividing the amount of oil and gas production taxes collected by the Texas Comptroller of Public Accounts (comptroller) in that county in the preceding state fiscal year by the total amount of oil and gas production taxes collected by the comptroller in the preceding state fiscal year in all counties that will receive money under subsection (a)(2) of this section in that year; and

(2) multiplying the quotient determined under paragraph (1) of this subsection by the total amount allocated under subsection (a)(2) of this section.

(d) Well completion ratio. The amount allocated to a county under subsection (a)(3) of this section in a state fiscal year is determined by:

(1) dividing the number of well completions in that county in the preceding state fiscal year, as determined by the Railroad Commission of Texas, by the total number of well completions in the preceding state fiscal year in all counties that will receive money under subsection (a)(3) of this section in that year; and

(2) multiplying the quotient determined under paragraph (1) of this subsection by the total amount allocated under subsection (a)(3) of this section.

(e) Oil and gas waste injected ratio. The amount allocated to a county under subsection (a)(4) of this section in a state fiscal year is determined by:

(1) dividing the volume of oil and gas waste injected in the preceding state fiscal year in that county, as determined by the Railroad Commission of Texas, by the total volume of oil and gas waste injected in the preceding state fiscal year in all counties that will receive money under subsection (a)(4) of this section in that year; and

(2) multiplying the quotient determined under paragraph (1) of this subsection by the total amount allocated under subsection (a)(4) of this section.

§15.186. Allocation of Excess.

If the department determines that the total amount of funds allocated to one or more counties under §15.185 of this subchapter (relating to Allocation to Counties) exceeds the amount requested in the county's application, the department will total all of those excess amounts. The department will reallocate that total in accordance with the procedures in §15.185 of this subchapter as if it were the initial allocation, except that the counties whose requested amounts have been satisfied will not be considered for the purposes of the reallocation.

§15.187. Acceptance of Applications.

(a) Request for applications. From time to time the commission may designate a period during which the department will accept applications for grants from the fund and, for each designated period, prescribe conditions for submission.

(b) Notice. The department will publish notice of the request for applications on the department's website and will provide a written notice to the county judge of each county in the state. The notice will specify:

(1) the period of time for submitting applications;

(2) the estimated amount of money available for grants from the fund; and

(3) any additional conditions for submission.

§15.188. Application Procedure.

(a) Application form. An eligible county may submit to the department an application for a grant from the fund.

(1) The application must be submitted electronically using the department's automated system designated for the grant program.

(2) A county is responsible for obtaining its use of a computer system and access to the Internet.

(3) Upon request, a county may use the department's computer system at any district office location.

(4) For an application to be valid, the county must submit the application during a period designated under §15.187 of this subchapter (relating to Acceptance of Applications) and satisfy the requirements of this section.

(b) Plan requirements. An application must contain a plan that:

(1) provides a prioritized list of transportation infrastructure projects to be funded by the grant;

(2) describes the scope of each listed transportation infrastructure project including:

(A) a clear and concise description of the proposed work;

(B) a map delineating project location and termini;

(C) an implementation plan, including a schedule of proposed activities;

(D) an estimate of project costs;

(E) the project funding sources; and

(F) other information required by the department;

(3) identifies matching funds required under §15.183 of this subchapter (relating to Matching Funds); and

(4) identifies other potential sources of funding to maximize resources available for the listed transportation infrastructure projects.

(c) Additional submissions. In addition to the application form, the county must also submit:

(1) a road condition report described by Transportation Code, §251.018 made by the county for the preceding year;

(2) a copy of the order establishing a county energy transportation reinvestment zone in the county; and

(3) documentation evidencing the creation of an advisory board as required under Transportation Code, §222.1072.

(d) Information for previous grant. If the county has received a grant under this subchapter, it must also submit:

(1) a certification that all previous grants have been or are being spent in accordance with the applicable plan submitted under subsection (b) of this section; and

(2) an accounting of expenditures under the previous grant, including any amounts spent on administrative costs.

§15.189. Review of Application.

(a) Preliminary review. The department will conduct a preliminary review of each timely submitted application within 14 days after the date of receipt of the application and will notify the applicant in writing if any required information is missing. The applicant must correct the deficiency on or before the later of the deadline for submitting applications or the 14th day after the date of receipt of a deficiency notice. When the application is complete, the department will notify the applicant in writing.

(b) Department review. The department will complete the review of each valid application before the 31st day after the date that the department receives the application unless additional time is needed, in which event the executive director may extend the period up to the 60th day after the date of receipt of the application by providing written notice of the extension to the applicant.

(c) Additional considerations. In reviewing an application, the department will:

(1) seek other potential sources of funding to maximize resources available for the transportation infrastructure projects to be funded by the requested grant; and

(2) consult related transportation planning documents to improve project efficiency and to work effectively in partnership with the county.

§15.190. Notice of Award.

The department will provide a written notice to each applicant that states the amount of the grant awarded from the fund or stating the reasons for denial of the grant.

§15.191. Agreement.

(a) Requirement; content. Before receiving a grant from the fund, a county must enter into an agreement with the department under this section. The agreement must include, in addition to other provisions, a commitment by the county to:

(1) place the transportation infrastructure project on the county road system, if it is a county road not already on the system;

(2) expend grant money received only on allowable costs as provided in §15.192 of this subchapter (relating to Payment of Money);

(3) comply with all applicable federal, state, and local environmental laws and regulations and permitting requirements;

(4) maintain the road after completion of the proposed work, if it is a county road; and

(5) contribute to the department for each transportation infrastructure project located on the state highway system, from the amount awarded to the county from the fund and the county's matching funds, if applicable, an amount equal to the allowable costs, as defined by §15.192 of this subchapter, incurred by the department for that project.

(b) Amendment to agreement. Any amendment to the agreement described in subsection (a) of this section must be in writing and executed jointly by the executive director and the county. A county may add a transportation infrastructure project to the prioritized list described in its application submitted under §15.188 of this subchapter (relating to Application Procedure), or a project on the list may be moved forward or backward in priority if the county submits to the department the requested revision and, for any added project, contains the information required by §15.188(b)(2) and (3) of this subchapter.

§15.192. Payment of Money.

(a) Allowable costs. A county may receive money from the fund only as reimbursement of allowable costs related to the transportation infrastructure projects listed in accordance with this subchapter. Allowable costs are the necessary project related expenditures properly attributable to the work performed and may include a portion or all of the administrative costs of a county energy transportation reinvestment zone, subject to the limitations provided in Transportation Code, §222.1071.

(1) The county must request reimbursement using the forms and procedures specified by the department.

(2) Reimbursement will be made in accordance with generally accepted cost accounting practices on the basis of direct and related indirect costs that are incurred after the department makes the grant award under §15.190 of this subchapter (relating to Notice of Award).

(3) The department, on the request of a county, will make intermediate payments not more often than monthly.

(b) Audit. All county cost records and accounts relating to a project that receives money from the fund are subject to audit by representatives of the department and other entities of the State of Texas and, if applicable, the federal government, for a period of three years after the date that final payment is received by the county.

§15.193. Certification of Completion.

Within 60 days after the date of completion of a listed transportation infrastructure project, a county receiving a grant from the fund must submit a written certification that it has complied with the requirements of this subchapter, including a certification that the project has been constructed in accordance with the applicable requirements. The certification must describe the allowable costs for the project and the amount reimbursed from the fund.

§15.194. Use of Unexpended Funds.

If allocated funds remain after reimbursement of all of a county's listed transportation infrastructure projects, the county may use the unexpended balance for any transportation project in the county if within one year after the date of submission of the written certification required by §15.193 of this subchapter (relating to Certification of Completion), the county submits in writing to the department a proposed amendment to the agreement under §15.191 of this subchapter (relating to Agreement) that identifies the additional project and contains the information required by §15.188(b)(2) and (3) of this subchapter (relating to Application Procedure) for that project, and the department and county execute the proposed amendment.

§15.195. Enforcement.

The executive director may:

(1) prohibit a county from participating in the program under this subsection if the executive director determines that the county has not complied with one or more material requirements of this subchapter;

(2) prohibit a county from participating in the program under this subsection until the executive director determines that the county has complied with all material requirements of this subchapter; or

(3) remove a project from participation in the program under this subsection if work on the project is not begun within three years after the date of the agreement under §15.191 of this subchapter (relating to Agreement) or within another reasonable period that is agreed to by the department and the county.

§15.196. Reimbursement.

If a county commences performance on a transportation infrastructure project but fails to complete the project, the department may seek reimbursement of all grant money received by the county for that project. Any money recovered under this section will be deposited to the credit of the fund.

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 August 29, 2013.

TRD-201303639
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 463-8683

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CHAPTER 25. TRAFFIC OPERATIONS
SUBCHAPTER B. PROCEDURES FOR ESTABLISHING SPEED ZONES

43 TAC §25.27

The Texas Department of Transportation (department) proposes new §25.27, Variable Speed Limits, concerning procedures for establishing speed zones.

EXPLANATION OF PROPOSED NEW SECTION

House Bill 2204, 83rd Legislature, Regular Session, 2013, requires the Texas Transportation Commission (commission) to establish a variable speed limit pilot program to study the effectiveness of temporarily reducing speed limits to address inclement weather, congestion, road construction, or other conditions that impact the safe and orderly movement of traffic.

House Bill 2204 requires that the commission select up to three sites for the pilot program and inform the Texas Department of Public Safety and affected local law enforcement agencies about the program, and requires that a variable speed limit be based on an engineering and traffic investigation. House Bill 2204 also sets out the parameters for the placement of advance notification signs that are to be used for the display of variable speed limits and allows a variable speed limit to be displayed on a portable or stationary changeable message sign.

New §25.27 sets out the department's authority to establish variable speed limits, the delegation of the commission's authority to create these speed limits to department staff, the criteria for establishing variable speed limits, the requirements for advance notification sign placement related to these speed limits, the requirements for the department to keep documentation of lowered speed limits, that the department is required to coordinate with state and local law enforcement regarding the variable speed limit pilot program, and that the new section will expire on February 1, 2015, unless otherwise extended under state law.

Under current regulatory speed limit procedures the department staff conducts an engineering and traffic study, referred to as a speed study, which generally consists of a determination of the 85th percentile speed and presents the findings of that study to the commission for adoption. Those current procedures are not suitable for temporarily reducing speed limits because of the temporary and unpredictable nature of the factors that cause such a reduction.

The new section addresses the issue of adoption of a new temporary speed limit by delegating to the district engineers in the affected areas the authority to set variable speed limits based on existing factors and authorizing the district engineers to further delegate that authority to other staff who are experienced in conducting speed studies and analyzing the results. This allows the local staff who are familiar with the roads to respond in a timely manner to conditions that require a temporary reduction in speed for safe travel. The new section authorizes more than

one staff member to establish a reduced speed limit to provide for a program that is responsive to events at all times.

The new section provides for the development of a new engineering and traffic study and removes the current 85th percentile and strip map requirements for setting variable speed limits. The department's local staff will be able to monitor the area chosen for the pilot program by either reports or automated field technology to determine if a speed reduction is necessary to maintain safe travel conditions. Based on traffic engineering experience, the staff also will be able to establish variable speed limits that safely decrease the speed of traffic in an incremental process. The anticipated benefit is the ability to slow vehicles traveling at the higher rate of speed before they reach traffic that, because of inclement weather, congestion, road construction, or some other condition, is either stopped or traveling at a much lower rate than the statutory or regulatory prima facie speed.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the new section as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section.

Carol Rawson, Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

PUBLIC BENEFIT AND COST

Ms. Rawson has also determined that for each year of the first five years in which the section is in effect, the public benefit anticipated as a result of enforcing or administering the new section will be to improve safety on the state highway system where drivers encounter inclement weather, congestion, road construction, or other conditions. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §25.27 may be submitted to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "25.27." The deadline for receipt of comments is 5:00 p.m. on October 15, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed new section, or is an employee of the department.

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Section 2, Chapter 994, Acts of the 83rd Legislature, Regular Session, 2013 (House Bill No. 2204).

CROSS REFERENCE TO STATUTE

Chapter 994, Acts of the 83rd Legislature, Regular Session, 2013 (House Bill No. 2204).

§25.27. Variable Speed Limits.

(a) Authority to set variable speed limits. House Bill 2204, 83rd Legislature, Regular Session, 2013, requires the commission to establish, and the department to implement, a variable speed limit pilot program to study the effectiveness of temporarily lowering prima facie speed limits to address inclement weather, congestion, road construction, or any other condition that affects the safe and orderly movement of traffic on a roadway. The executive director of the department will select the areas of the state in which the pilot program will be conducted. The department's district engineers in the selected areas are responsible for establishing the reduced speed limits for the affected roadways and the periods of effectiveness based on the criteria provided in this section. A district engineer may delegate that authority to the districts' deputy district engineer, director of construction, director of operations, or director of maintenance, or a director of transportation operations or a traffic engineer for the district.

(b) Criteria for variable speed limits. The established prima facie speed limits on a portion of the state highway system may be lowered as necessary for the safe and orderly movement of traffic as a result of traffic volume, adverse weather conditions, highway construction work zones, or traffic crashes and incidents. These reduced speed limits must be based on an engineering and traffic investigation and will be lowered only in multiples of five miles per hour.

(c) Engineering and traffic study. The engineering and traffic study required to establish the variable speed limit may include the determination of a spot speed within the affected area, speed-over-distance readings from automated field technology, sight distance during inclement weather, or traffic flow obtained by either field investigation or automated technology. An 85th percentile speed study is not required for establishing a variable speed limit.

(d) Sign placement. A speed limit established under this section is effective only when a sign indicating the change in the speed limit is displayed between 500 and 1,000 feet before the point at which the speed limit takes effect. A sign will also be posted at the point where the speed limit takes effect. The department may use an electronic sign that is capable of displaying more than one message for posting a reduced speed limit.

(e) Documentation of lowered variable speed limits. The department will keep an official record of all changes made to prima facie speed limit established for an affected roadway that includes the date, time, and duration of the lowered speed limit.

(f) Coordination. The department will coordinate closely with state and local law enforcement agencies regarding the locations and reduced speed limits at all variable speed limit sites. The department will make records maintained under subsection (e) of this section available to state and local law enforcement entities in order to support speed limit enforcement.

(g) Expiration. This section expires February 1, 2015.

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 August 29, 2013.

TRD-201303640
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 463-8683

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SUBCHAPTER O. CRASH RECORDS INFORMATION SYSTEM

43 TAC §25.975, §25.977

The Texas Department of Transportation (department) proposes amendments to §25.975, Crash Record Statistical Analysis, and §25.977, Reporting by Investigating Officers, both concerning the crash records information system.

EXPLANATION OF PROPOSED AMENDMENTS

The department became the office of record for state crash data in October of 2007 when this function was transferred to the department from the Department of Public Safety (DPS) in accordance with Transportation Code, Chapter 550. The Public Safety Commission had adopted the crash record report form, Form CR-3, by reference in its administrative rules. This rule, along with the other rules regarding the state crash data program, were transferred to the department in October 2007. The Texas Transportation Commission (commission) then continued the adoption by reference of the Form CR-3 in §25.977. In June 2011 the commission adopted in that section a new form, Form CR-3 Alternate, by reference to provide an alternate format for reporting the information covered by Form CR-3.

Forms CR-3 and CR-3 Alternate provide for the collection of specific information about a motor vehicle crash, information about the vehicles involved in the crash, and information about the people who were involved in the crash. The forms include various items such as: the date of the crash; location of the crash; type of highway where the crash occurred; whether the crash occurred on public or private property; driver and passenger names; injury severity; factors that contributed to the crash; commercial vehicle information such as, vehicle type, configuration, and carrier name; driver's license information; vehicle information, including the model, make, year, and vehicle identification number; citation information; emergency response information; and information about safety belt usage. The information collected is necessary to utilize the reports for their intended purpose of meeting state and federal reporting requirements and identifying safety issues.

Amendments to §25.975 delete subsection (c), which requires a crash report to be submitted by June of the year following the year in which the crash occurred. The Crash Records Information System (CRIS) is considered a live database, therefore the department will accept late crash reports for inclusion in the database as long as the year of the crash is within the department's retention period for those documents.

Amendments to §25.977 delete the declarations that the commission has adopted by reference the crash record report form (CR-3) and the alternative crash record report form (CR-3 Alternate). Because the CR-3 or CR-3 Alternate forms are currently adopted by reference, changing the CR-3 or CR-3 Alternate form requires the department to propose any change to the form through the rulemaking process. This process can delay the implementation of small administrative changes until there are sufficient changes to warrant rulemaking. There is also a timing issue with adopting the CR-3 and CR-3 Alternate forms by reference. The statistical information gathered in the reports must be consistent for the reporting year, and, therefore, new forms can only be implemented January 1. Currently, a change to the forms initiated as early as October of a year would not be effective until after January 1 of the following year, which is the implementation deadline and, therefore, would not be included on new forms until fifteen months later. By eliminating the adoption by reference language the department will be able to make changes to the forms to address administrative issues, new legislation, and requests from DPS and other law enforcement agencies.

The rules will continue to set out a description of information that must be included in the forms. As long as the changes to the forms do not delete the information that is required to be included by §25.977, the department will no longer be required to go through the rulemaking process to make changes to the forms. The department will coordinate with DPS on any future changes to the forms.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Carol Rawson, Director, Traffic Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Ms. Rawson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be timely changes to the crash record report that will allow improved statistical information as well as helping to ensure that crash reports are submitted to the department in a timely manner. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §25.975 and §25.977 may be submitted to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "25.975-77." The deadline for receipt of comments is 5:00 p.m. on October 15, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 550.

§25.975. Crash Record Statistical Analysis.

(a) The department will classify motor vehicle crashes by the standards established in the following manuals available through the department web site at www.txdot.gov:

(1) the Manual on Classification of Motor Vehicle and Traffic Accidents as adopted by the American Standards Institute, Inc.; and

(2) the Minimum Model Uniform Crash Criteria (MMUCC) Guideline.

(b) For department reporting purposes, only a death caused by the crash that occurs within 30 days after the motor vehicle crash will be counted as a motor vehicle traffic crash fatality.

~~[(c) A crash report must be submitted by the last business day of June of the year following the year in which the crash occurs, so that it may be entered into the crash record data base and included in the final year end statistical analysis for the year in which the crash occurred.]~~

§25.977. Reporting by Investigating Officers.

(a) A law enforcement officer who investigates a motor vehicle crash shall submit a crash record report within 10 days of the accident on a form prescribed by the department if the crash resulted in:

(1) injury to or death of a person;

(2) $1000 or more of property damage to the property of any one person.

(b) The crash record report form must include:

(1) information about the crash;

(2) information about all vehicles involved in the crash;

(3) information about each person involved in the crash; and

(4) other factors necessary for the department to comply with state and federal reporting requirements.

(c) The department has developed Form CR-3, Texas Peace Officer's Crash Report, to satisfy the requirements of subsection (b) of this section. [~~The commission adopts Form CR-3 by reference.~~]

(d) The department also has developed Form CR-3 Alternate, Texas Peace Officer's Alternate Crash Report, to satisfy the requirements of subsection (b) of this section and provide an alternate format that the investigating officer or the officer's law enforcement agency may choose for reporting the required information. [~~The commission adopts Form CR-3 Alternate by reference.~~]

(e) The forms are available through the department's website at www.txdot.gov.

(f) Incomplete or inaccurate crash reports, with the exception of location information as described in §25.974(b) of this subchapter (relating to Officer Accident Report Modifications), will be returned to the originating law enforcement agency for correction.

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 August 29, 2013.

TRD-201303641
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 13, 2013
For further information, please call: (512) 463-8683

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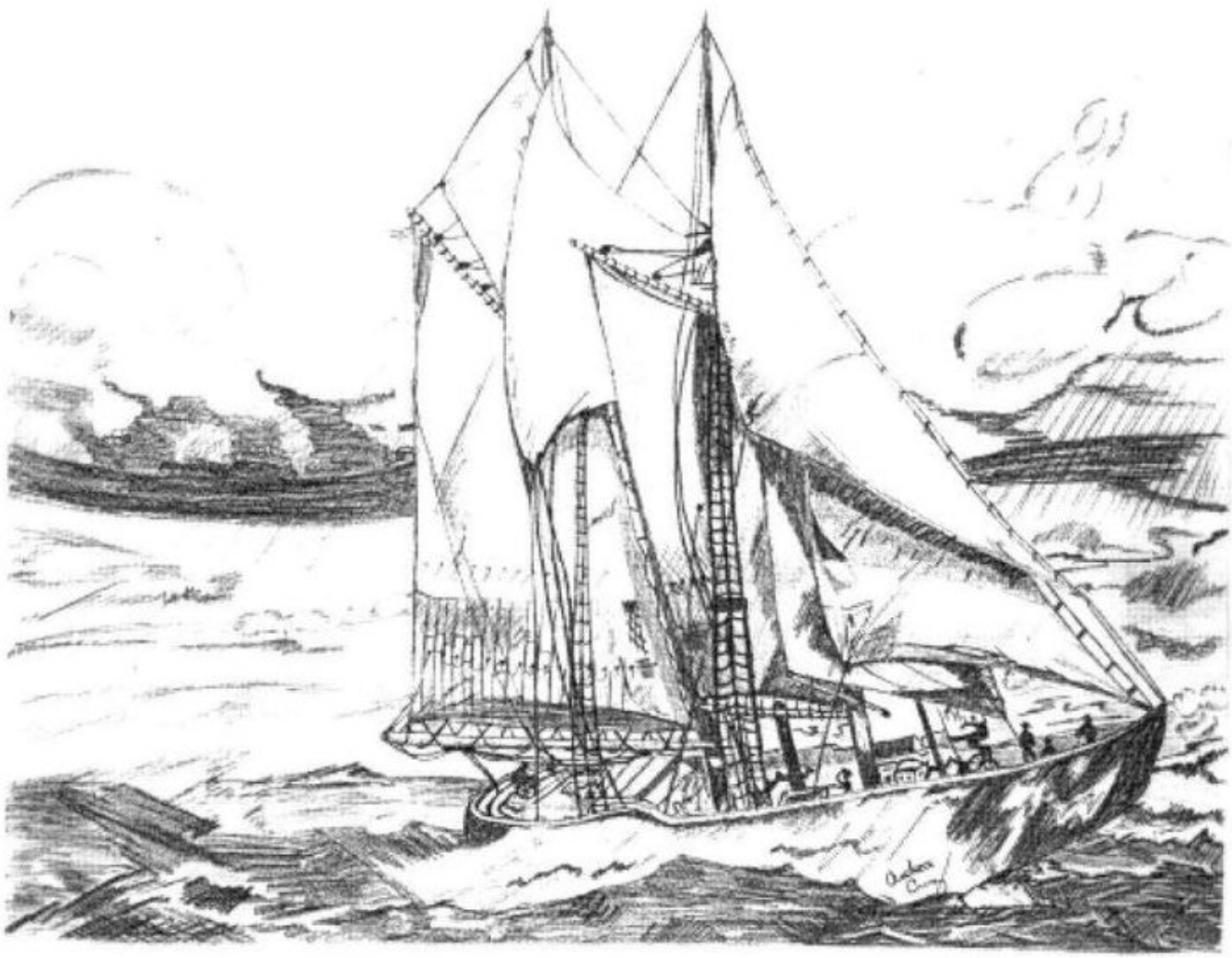

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.206

The Texas Department of Agriculture (the department) adopts the repeal of §1.206, concerning the Oyster Advisory Committee, without changes to the proposal as published in the July 12, 2013, issue of the *Texas Register* (38 TexReg 4455). The repeal is adopted to implement changes made to Texas Agriculture Code, Chapter 47, by House Bill 1903 (HB 1903), 83rd Legislature, 2013, which abolished the department's oyster promotion program and the Oyster Advisory Committee. The repeal of §1.206 eliminates the Oyster Advisory Committee from the department's rules.

No comments were received on the proposal.

The repeal is adopted under the Texas Government Code, §2110.005, which requires that an agency that establishes an advisory committee adopt rules to state the purpose and tasks of the committee and manner in which the committee shall report to the agency; and §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect; and Texas Agriculture Code, §12.016, which provides the department with the authority to adopt rules to administer its duties under the 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 August 28, 2013.

TRD-201303634
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 17, 2013
Proposal publication date: July 12, 2013
For further information, please call: (512) 463-4075

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 5. REGISTERED INTERIOR DESIGNERS

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.31

The Texas Board of Architectural Examiners adopts an amendment to §5.31, concerning Registration by Examination, without changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4129) and will not be republished.

The amendment pertains to registration by examination as a registered interior designer which requires applicants to successfully complete the National Council for Interior Design Qualification ("NCIDQ") examination in order to become a registered interior designer. The amendment allows an applicant to become registered upon the successful completion of the Architectural Registration Examination ("ARE") or an examination the National Council of Architectural Registration Boards (NCARB) deems equivalent to the ARE, an examination that is a predecessor to the NCIDQ examination or an examination deemed equivalent by NCIDQ as an alternative to passing the NCIDQ examination. The amendment specifies that passing the ARE may serve as a substitute for the NCIDQ examination if the applicant took the ARE after meeting prerequisites for taking the examination as part of the architectural registration process. The rule implements §1051.351(c-1) as adopted by House Bill (HB) 1717 which was passed by the 83rd Legislature. The amendments also strike an obsolete provision that was repealed effective September 1, 2011.

Public comment was received from the Texas Society of Architects in favor of the rule as well as public comment from a private individual also in favor of the rule. The Texas Association of Interior Designers did not submit written comment on the amendments to the rules. However, a representative of the Association verbally addressed the board to state the Association opposes the substitution of the architectural registration examination for the interior design registration examination, although it does not oppose or disagree with the board recognizing passage of the architectural registration examination for the limited purpose of allowing architects who are currently registered as interior designers to maintain registration as interior designers under §1051.351(c-1), Occupations Code. The board declined to amend the rule as proposed to limit its application only to architects who became registered as interior designers without passage of the interior design examination. Under §1051.351(c-1) as adopted in HB 1717 during the 2013 legislative session, a registered interior designer who became registered without examination must pass a registration examination adopted by the board for registration as interior designer which examination is

in effect on January 1, 2014. If a person in this class of interior designers does not pass the examination on or before September 1, 2017, he or she will no longer be registered as an interior designer as of that date. In describing the examination which the registered interior designer must pass, the bill incorporates by cross-reference §1053.154, Occupations Code, which grants the board the authority to adopt an examination for an applicant to become registered as an interior designer. Thus, the examination for maintaining registration as an interior designer must be the same examination adopted by the board as a prerequisite to initially become registered as an interior designer. The board does not have legislative authority to designate additional or different examinations exclusively for the closed class of registered interior designers who became registered without passing the interior design registration examination but who did pass the architectural registration examination.

The amendment is adopted pursuant to §1051.202 and §1053.154, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code, and which requires the Board to designate an examination as a prerequisite for registration as an interior designer.

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 August 29, 2013.

TRD-201303642
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: September 18, 2013
Proposal publication date: June 28, 2013
For further information, please call: (512) 305-9040

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SUBCHAPTER C. EXAMINATION

22 TAC §5.51

The Texas Board of Architectural Examiners adopts an amendment to §5.51, concerning Requirements, without changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4131) and will not be republished.

The amendment pertains to requirements for registration by examination as a registered interior designer, including the requirement that applicants successfully complete the National Council for Interior Design Qualification ("NCIDQ") examination in order to become a registered interior designer. The amendment allows an applicant to become registered upon the successful completion of alternative examinations, including the Architectural Registration Examination ("ARE") or an examination deemed equivalent to the ARE by the examination provider which develops and administers the ARE. In addition, the amendment allows registration upon passage of an examination that is a predecessor to the NCIDQ examination or an examination deemed equivalent to the NCIDQ examination. In order for passing the ARE to serve as a substitute for the NCIDQ examination, the applicant must take the ARE after meeting prerequisites for taking it as part of the architectural registration process. The rule implements §1051.351(c-1) as adopted by House Bill (HB) 1717 which was passed by the 83rd Legislature.

Public comment was received from the Texas Society of Architects in favor of the rule as well as public comment from a private individual also in favor of the rule. The Texas Association of Interior Designers did not submit written comment on the amendments to the rules. However, a representative of the Association verbally addressed the board to state the Association opposes the substitution of the architectural registration examination for the interior design registration examination, although it does not oppose or disagree with the board recognizing passage of the architectural registration examination for the limited purpose of allowing architects who are currently registered as interior designers to maintain registration as interior designers under §1051.351(c-1), Occupations Code. The board declined to amend the rule as proposed to limit its application only to architects who became registered as interior designers without passage of the interior design examination. Under §1051.351(c-1) as adopted in HB 1717 during the 2013 legislative session, a registered interior designer who became registered without examination must pass a registration examination adopted by the board for registration as interior designer which examination is in effect on January 1, 2014. If a person in this class of interior designers does not pass the examination on or before September 1, 2017, he or she will no longer be registered as an interior designer as of that date. In describing the examination which the registered interior designer must pass, the bill incorporates by cross-reference §1053.154, Occupations Code, which grants the board the authority to adopt an examination for an applicant to become registered as an interior designer. Thus, the examination for maintaining registration as an interior designer must be the same examination adopted by the board as a prerequisite to initially become registered as an interior designer. The board does not have legislative authority to designate additional or different examinations exclusively for the closed class of registered interior designers who became registered without passing the interior design registration examination but who did pass the architectural registration examination.

The amendment is adopted pursuant to §1051.202 and §1053.154, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code, and which requires the Board to designate an examination as a prerequisite for registration as an interior designer.

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 August 29, 2013.

TRD-201303643
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: September 18, 2013
Proposal publication date: June 28, 2013
For further information, please call: (512) 305-9040

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CHAPTER 7. ADMINISTRATION

22 TAC §7.10

The Texas Board of Architectural Examiners adopts an amendment to §7.10, concerning General Fees, without changes to the

proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4132) and will not be republished.

The amendment pertains to fees paid to the board. The amendments implement recent changes made by the 83rd Legislature through the passage of House Bill (HB) 1717. The bill amended the statute relating to late charges for failing to timely renew certificates of registration. As amended, the agency is no longer authorized to impose the late charge on the $200 portion of each renewal fee which is transferred to the General Revenue fund and the Foundation School fund. The amendment replaces the current fee schedule with a more detailed fee schedule which is easier to understand. The replacement schedule lists the occupations fee separately from the remainder of the annual registration renewal fee and implements the Legislature's mandate that the agency assess late charges only upon the portion of the renewal fee that is not transferred to the General Revenue and Foundation School funds. The late fees are recalculated to reflect the lower amounts. The amendments also implement a change in the law which imposes the $200 supplemental fee to the initial registration of architects. The proposed business registration fees would increase from $30 to $45 per year and make corresponding increases upon the late fees for business registrants. The amendment also incorporates a convenience fee upon online transactions to cover the cost to the agency of the third-party contractor to administer online certificate renewals. The amendments delete an obsolete fee for administering the Landscape Architectural Registration Examination and a fee for interior design registration by prior application which is covered by an identical fee for exam application. The agency no longer collects the fee because the examination is administered by third-party contractors and is no longer administered by the board. The amendments also correct a typographical error in the rule so that the word "routing" is corrected.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code. A portion of the rule is adopted pursuant to §1051.651(c), Texas Occupations Code, which allows the board to charge a fee, not to exceed 5 percent, to process online payments; §1051.353(b) as amended by HB 1717 which specifies the lower fee paid for late registration renewal; and generally §1051.651 which allows the board to set a fee to cover the administrative costs of a board action.

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 August 29, 2013.

TRD-201303644
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: September 18, 2013
Proposal publication date: June 28, 2013
For further information, please call: (512) 305-9040

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Board of Directors (Board) of the Texas Agricultural Finance Authority (TAFA) of the Texas Department of Agriculture (TDA) proposes to review Texas Administrative Code, Title 4, Part 1, Chapter 28, concerning Texas Agricultural Finance Authority. Chapter 28 consists of Subchapter A, concerning Financial Assistance Rules; Subchapter B, concerning Interest Rate Reduction Program; Subchapter C, concerning Agricultural Loan Guarantee Program; Subchapter D, concerning Young Farmer Interest Rate Reduction Rules; Subchapter E, concerning Young Farmer Grant Program Rules; and Subchapter F, concerning Rules for Deposition and Refund of Assessment Fees. The review will be conducted pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposes amendments to Chapter 28, Subchapter A, §28.2 and §28.3; Subchapter B, §28.13; and Subchapter C, §28.29. The proposal may be found in the Proposed Rules section of this issue of the *Texas Register.*

The assessment of 4 TAC Chapter 28, Subchapters A - F by the department at this time indicates that, with the exception of the proposed amendments to Subchapters A - C, the reason for readopting without changes all sections in these subchapters continues to exist.

The department is accepting comment on the review of Chapter 28, Subchapters A - F. Comments on the review must be submitted within 30 days following the publication of this notice in the *Texas Register* to Bryan Daniel, Chief Administrator, Trade and Business Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-201303632
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: August 28, 2013

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Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts proposes to review Texas Administrative Code, Title 34, Part 1, Chapter 7, Prepaid Higher Education Tuition Program; Chapter 8, Jobs and Education for Texans (JET) Grant Program; Chapter 9, Property Tax Administration; Chapter 12, Economic Growth; and Chapter 13, Unclaimed Property Reporting and Compliance. This review is being conducted in accordance with Government Code, §2001.039. The review will include, at the minimum, whether the reasons for readopting continue to exist.

The comptroller will accept comments regarding the review. The comment period will last for 30 days following the publication of this notice in the *Texas Register.*

Comments pertaining to this review may be directed accordingly:

Chapter 7, Prepaid Higher Education Tuition Program

Linda Fernandez, Program Director

Educational Opportunities and Investment Division

P.O. Box 13528, Austin, Texas 78711-3528

Chapter 8, Jobs and Education for Texans (JET) Grant Program

Linda Fernandez, Program Director

Educational Opportunities and Investment Division

P.O. Box 13528, Austin, Texas 78711-3528

Chapter 9, Property Tax Administration

Deborah Cartwright, Director

Property Tax Assistance Division

P.O. Box 13528, Austin, Texas 78711-3528.

Chapter 12, Economic Growth

Cary Dupuy, Policy Advisor

Natural Resources Policy Division

P.O. Box 13528, Austin, Texas 78711-3528

Chapter 13, Unclaimed Property Reporting and Compliance

Joani Bishop

Unclaimed Property

P.O. Box 13528, Austin, Texas 75711-3528

TRD-201303713
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: September 4, 2013

♦ ♦ ♦

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 7, Part 5, Chapter 88, concerning Consumer Debt Management Services. Chapter 88 contains Subchapter A, concerning Registration Procedures; Subchapter B, concerning Annual Requirements; and Subchapter C, concerning Operational Requirements.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments for 31 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed 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. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201303720
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 4, 2013

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Prescribed Burning Board

Title 4, Part 13

The Prescribed Burning Board (PBB) of the Texas Department of Agriculture (the department) proposes to review Texas Administrative Code, Title 4, Part 13, Chapters 225 - 229, pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposes the repeal of existing Chapters 225 - 229, concerning regulations for the prescribed burning program, and simultaneously proposes new Chapters 225 - 229. The repeals and new sections are proposed to consolidate and reorganize existing rules and present them to the public and the regulated industry in a more easily understandable format and to make changes based on Board and legislative action. More specifically, the PBB proposes the repeal of Chapter 225, §225.1 and §225.2, concerning general provisions of the PBB; the repeal of Chapter 226, §§226.1 - 226.6, concerning standards for certified prescribed burn managers; the repeal of Chapter 227, Subchapter A, §§227.1 - 227.8, concerning certification requirements of the PBB; Subchapter B, §§227.10 - 227.16, concerning continuing education for recertification/renewal of certification; and Subchapter C, §227.20, concerning recordkeeping; the repeal of Chapter 228, §§228.1 - 228.4, concerning training for prescribed burn managers; and the repeal of Chapter 229, §229.1, concerning educational and professional requirements for lead instructors.

The Board proposes the repeal of Chapters 225 - 229 to facilitate the adoption of new Chapter 225, §§225.1 - 225.5, concerning general provisions of the PBB; new Chapter 226, §§226.1 - 226.7, concerning certification by the board; new Chapter 227, §§227.1 - 227.4, concerning requirements for certified and insured prescribed burn managers; new Chapter 228, §§228.1 - 228.4, concerning procedures for certified and prescribed burn managers; and new Chapter 229, §§229.1 - 229.5, concerning continuing fire training. The proposed new sections provide applicant certification categories, eligibility criteria, continuing fire training requirements, and PBB program administration. The proposal may be found in the proposed rule section of this publication of the *Texas Register*.

The department is accepting comment on the review of Chapters 225 - 229. Comments on the review must be submitted within 30 days following the publication of this notice in the *Texas Register* to David Kostroun, Chief Administrator, Agriculture and Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-201303728
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Filed: September 4, 2013

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §102.1

SCHEDULE OF FEES

	Board Fee	Professional Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	Total Fee
DENTIST							
Application by Exam	$215.00	$200.00	$0.00	$0.00	$5.00	$55.00	$475.00
Annual Renewal	$150.00	$200.00	$10.00	$9.00	$1.00	$55.00	$425.00
Annual Renewal - Late 1 to 90 days	$225.00	$200.00	$10.00	$9.00	$1.00	$55.00	$500.00
Annual Renewal - Late 90 to 365 days	$300.00	$200.00	$10.00	$9.00	$1.00	$55.00	$575.00
Licensure by Credentials	$2,800.00					$55.00	$2,855.00
Temporary Licensure by Credentials	$750.00						$750.00
Faculty Initial Application	$115.00				$5.00		$120.00
Faculty Annual Renewal	$95.00		$10.00	$9.00	$1.00		$115.00
Faculty Annual Renewal - Late 1 to 90 days	$142.50		$10.00	$9.00	$1.00		$162.50
Faculty Annual Renewal - Late 90 to 365 days	$190.00		$10.00	$9.00	$1.00		$210.00
Conversion Fee - Faculty to Full Privilege	$50.00						$50.00
Nitrous Oxide and Level 1 Anesthesia Application	$32.00						$32.00
Nitrous Oxide and Level 1 Anesthesia Annual Renewal	$10.00						$10.00
Level 2 thru Level 4 Anesthesia Application	$60.00						$60.00
Level 2 thru Level 4 Anesthesia Annual Renewal	$10.00						$10.00
Portability of Anesthesia Level 3 thru Level 4 Application	$120.00						$120.00
Application to Reactivate a Retired License	$75.00						$75.00
Duplicate License / Renewal	$25.00						$25.00
Conversion Fee - Full Privilege to Faculty	$50.00						$50.00
Conversion Fee - Temporary Licensure by Credentials to Full	$2,050.00					$55.00	$2,105.00
DENTAL HYGIENIST							
Application by Exam	$115.00				$5.00		$120.00
Annual Renewal	$100.00		$6.00	$2.00	$1.00		$109.00
Annual Renewal - Late 1 to 90 days	$150.00		$6.00	$2.00	$1.00		$159.00
Annual Renewal - Late 90 to 365 days	$200.00		$6.00	$2.00	$1.00		$209.00
Licensure by Credentials	$630.00						$630.00
Temporary Licensure by Credentials	$220.00						$220.00
Faculty Initial Application	$115.00				$5.00		$120.00
Faculty Annual Renewal	$83.00		$6.00	$2.00	$1.00		$92.00
Faculty Annual Renewal - Late 1 to 90 days	$124.50		$6.00	$2.00	$1.00		$133.50
Faculty Annual Renewal - Late 90 to 365 days	$166.00		$6.00	$2.00	$1.00		$175.00
Conversion Fee - Faculty to Full Privilege	$50.00						$50.00

	Board Fee	Professional Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg – HB 3201	Total Fee
Application to Reactivate a Retired License	$75.00						$75.00
Duplicate License / Renewal	$25.00						$25.00
Nitrous Oxide Cons Sed Monitoring Application	$12.00						$12.00
Nitrous Oxide Monitoring Duplicate Certificate	$10.00						$10.00
Conversion Fee - Full Privilege to Faculty	$50.00						$50.00
Conversion Fee - Temporary Licensure by Credentials to Full	$410.00						$410.00
DENTAL ASSISTANT							
Initial Application	$31.00				$5.00		$36.00
Annual Renewal	$29.00		$2.00		$1.00		$32.00
Annual Renewal - Late 1 to 90 days	$43.50		$2.00		$1.00		$46.50
Annual Renewal - Late 90 to 365 days	$58.00		$2.00		$1.00		$61.00
Duplicate License / Renewal	$25.00						$25.00
Pit and Fissure Sealant Application	$30.00						$30.00
Pit and Fissure Sealant Renewal	$18.00						$18.00
Duplicate Pit Fissure Certificate	$15.00						$15.00
Nitrous Oxide Cons Sed Monitoring Application	$12.00						$12.00
Nitrous Oxide Monitoring Duplicate Certificate	$10.00						$10.00
Coronal Polishing Application	$12.00						$12.00
Duplicate Coronal Polishing Certificate	$10.00						$10.00
DENTAL LABORATORIES							
Application	$120.00				$5.00		$125.00
Annual Renewal	$131.00		$3.00		$1.00		$135.00
Annual Renewal - Late 1 to 90 days	$196.50		$3.00		$1.00		$200.50
Annual Renewal - Late 90 to 365 days	$262.00		$3.00		$1.00		$266.00
Duplicate Certificate	$25.00						$25.00
OTHER							
Mobile Application	$120.00						$120.00
Annual Mobile Renewal	$60.00						$60.00
Duplicate Certificate Mobile Certificate	$15.00						$15.00
Dentist Intern / Resident Prescription Privileges	$50.00						$50.00
Dental Assistant Course Provider	$100.00						$100.00
Jurisprudence	$55.00						$55.00
Licensure Verification without Seal	$4.00						$4.00

	Board Fee	Professional Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	Total Fee
Licensure Verification with Seal	$9.00						$9.00
Criminal History Letter	$25.00						$25.00
Printed Copy - Rules and Regulations	$20.00						$20.00
Printed Copy - TX Occupations Code - Dental Practice Act	$15.00						$15.00
Printed Consumer Signage	$5.00						$5.00
Board Scores	$10.00						$10.00

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of the Implementation of a 2014 Qualified Mortgage Credit Certificate Program

The Texas State Affordable Housing Corporation (the "Corporation"), a nonprofit corporation organized under the laws of the State of Texas (the "Program Area"), is implementing a qualified mortgage credit certificate program (the "Program") within the Program Area to assist eligible purchasers. A Mortgage Credit Certificate ("MCC") is an instrument designed to assist persons better afford home ownership. The MCC Program allows first-time homebuyers an annual federal income tax credit equal to the lesser of $2,000 or the credit rate for the MCC multiplied by the amount of interest paid by the holder on a home mortgage loan during each year that they occupy the home as their principal residence.

An eligible purchaser of a residence located within a Program Area may apply to the Corporation for an MCC through a participating lender of his or her choice at the time of purchasing a principal residence and obtaining a mortgage loan from a participating lender.

To be an eligible purchaser to receive an MCC, a purchaser must meet the following criteria:

(1) Be one of the following: (a) A person living in Texas whose annual household income does not exceed 80% Area Median Family Income (AMFI); or (b) A full-time Texas classroom teacher, teacher's aide, school librarian, school nurse, school counselor, or an allied health or nursing faculty member whose annual family income does not exceed 100% of AMFI (for families of two persons or less) or 115% of AMFI (for families of three or more persons); or (c) A full-time paid fire fighter, peace officer, corrections officer, juvenile corrections officer, county jailer, EMS personnel, or public security officer, working in the State of Texas whose annual family income does not exceed 100% of AMFI (for families of two persons or less) or 115% of AMFI (for families of three or more persons). Visit www.tsahc.org for a more complete description of the maximum income limits. (2) The applicant for the MCC cannot have had an ownership interest in his or her principal residence during the three-year period ending on the date the mortgage loan is obtained. (3) The applicant must intend to occupy the residence with respect to which the MCC is obtained as his or her principal residence within 60 days after the MCC is issued. The MCC issued to an applicant will be revoked if the residence to which the MCC relates ceases to be occupied by the applicant as his or her principal residence. (4) The MCC cannot be issued to an applicant in conjunction with the replacement or refinancing of an existing mortgage loan. The MCC can, however, be obtained in conjunction with the replacement of a construction period or bridge loan having a term of less than 24 months. (5) Federal law imposes limitations on the purchase price of homes financed under the program. These limitations are periodically adjusted. Visit www.tsahc.org to view the current maximum purchase prices allowed. Two-family, three-family and four-family residences are also eligible, provided that one of the units will be occupied by the mortgagor as his or her principal residence and that the residence was first occupied for residential purposes at least five years prior to the closing of the mortgage.

Anyone receiving an MCC and selling his or her residence within nine years of the issuance of the MCC may be required to return all or a portion of the tax credit received in connection therewith to the Internal Revenue Service.

To defray the costs of implementing the Program, the Corporation will charge applicants a compliance fee, plus an MCC issuance fee equal to one percent of the amount of such person's loan.

The Corporation strongly encourages anyone who believes that he or she qualifies for an MCC to apply at the offices of a participating lender. For more information regarding the Program and its restrictions, including a list of current participating lenders, please contact the Paige Omohundro, Homeownership Finance Manager, at (888) 638-3555 or by email at pomohundro@tsahc.org.

TRD-201303704
David Long
President
Texas State Affordable Housing Corporation
Filed: September 3, 2013

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 9/9/13 - 9/15/13 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 9/9/13 - 9/15/13 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 9/1/13 - 9/30/13 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 9/1/13 - 9/30/13 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-201303709
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 3, 2013

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Employees Retirement System of Texas

Contract Award Announcement

This contract award notice is being filed by the Employees Retirement System of Texas ("ERS") in relation to a contract award for audits of selected Carriers, health maintenance organizations ("HMOs"), Medicare Advantage HMOs and preferred provider organizations, and third-party administrators of the HealthSelect℠ of Texas and Texas Employees Group Benefits Programs. The contractor is:

Mountjoy Chilton Medley, LLP

2600 Meidinger Tower

462 South Fourth Street

Louisville, Kentucky 40202

The cost of the contract is estimated to be approximately $722,790.00. The contract was executed on August 22, 2013, and will be for a three (3) year term, subject to the terms of the contract.

TRD-201303633
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: August 28, 2013

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Contract Award Announcement

This contract award notice is being filed by the Employees Retirement System of Texas in relation to a contract award to provide Health Maintenance Organization Services for the Texas Employees Group Benefits Program Participants for the following Texas counties: Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina, and Wilson. The contractor is:

Community First Health Plans, Inc.

12238 Silicon Drive, Ste. 100

San Antonio, Texas 78249

The cost of the contract is estimated to be approximately $25 million. The contract was executed on August 29, 2013. The term of the contract begins on September 1, 2013, and will be for a one (1) year term, subject to the terms of the contract.

TRD-201303711
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: September 3, 2013

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 14, 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 October 14, 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: Alamo Commercial Properties, Ltd.; DOCKET NUMBER: 2013-1008-PWS-E; IDENTIFIER: RN100715507; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection equipment so that continuous and effective disinfection can be secured under all conditions; and 30 TAC §290.39(e)(1) and (h)(1), and Texas Health and Safety Code, §341.035, by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply; PENALTY: $455; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Ali Mohammad Solhjou dba Aldine Oaks Mobile Home Park; DOCKET NUMBER: 2013-0571-PWS-E; IDENTIFIER: RN101178358; LOCATION: Houston, Harris County; TYPE OF FACILITY: mobile home park with a public water supply; RULE VIOLATED: 30 TAC §290.106(e) and §290.113(e), by failing to timely provide the results of triennial minerals and Stage 1 disinfectant byproducts sampling to the executive director; 30 TAC §290.107(e), by failing to timely provide the results of sexennial volatile organic compound contaminants sampling to the executive director for the reporting period from January 1, 2005 - December 31, 2010; 30 TAC §290.107(e) and §290.108(e), by failing to timely provide the results of triennial synthetic organic chemical contaminants and radionuclides sampling to the executive director; 30 TAC §290.106(e), by failing to timely provide the results of annual nitrates/nitrites sampling to the executive director for the 2011 and 2012 reporting periods; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: $485; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Ali Mohammad Solhjou dba Aldine Oaks Mobile Home Park; DOCKET NUMBER: 2013-0217-PWS-E; IDENTIFIER: RN101178358; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(E)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a minimum well capacity of 1.0 gallon per minute per connection; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 91010658 for Fiscal Years 2005 - 2013; PENALTY: $90; ENFORCEMENT

COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Amy Investments, Incorporated dba Triangle Market; DOCKET NUMBER: 2013-0912-PST-E; IDENTIFIER: RN102992146; LOCATION: Beaumont, Jefferson 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; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Antonio C. Sanchez dba Blanco A & S; DOCKET NUMBER: 2013-1071-PST-E; IDENTIFIER: RN102260460; LOCATION: Von Ormy, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month; and by failing to provide release detection for the pressurized piping associated with the UST; PENALTY: $3,880; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: AT&T Corporation; DOCKET NUMBER: 2013-1055-PST-E; IDENTIFIER: RN104354683; LOCATION: Seguin, Bexar County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank system; PENALTY: $3,516; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: CARRINGTON ASSOCIATES, INCORPORATED dba Pioneer Valley Water Company; DOCKET NUMBER: 2013-0515-PWS-E; IDENTIFIER: RN102674579; LOCATION: Valley View, Cooke County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to the customers of the facility within 24 hours of a low pressure event or water outage; PENALTY: $1,357; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: CHARLIE BROWN's LEARNING CENTER; DOCKET NUMBER: 2013-0781-PWS-E; IDENTIFIER: RN102678430; LOCATION: Idalou, Texas 79329, Lubbock County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.122(a)(2)(D) and (f)(3), by failing to timely provide public notification regarding the exceedance of the acute maximum contaminant level for nitrate for the third quarter of 2011 - the second quarter of 2012; 30 TAC §290.106(e), by failing to provide the results of quarterly nitrate sampling to the executive director; 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 December 2012; and 30 TAC §290.122(a)(2)(D) and (f)(3), by failing to provide public notification regarding the exceedance of the acute maximum contaminant level for nitrate for the first quarter of 2011; PENALTY: $620; ENFORCEMENT COORDINATOR: Lisa Arneson Westbrook, (512) 239-1160; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(9) COMPANY: City of Maypearl; DOCKET NUMBER: 2013-1076-PWS-E; IDENTIFIER: RN101232981; LOCATION: Maypearl, Ellis County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2)(A), and Texas Health and Safety Code (THSC), §341.031(a), by failing to comply with maximum contaminant level (MCL) for total coliform and failed to provide public notification of the MCL exceedance for the month of December 2012; 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of being notified of a distribution total coliform-positive result during the month of December 2012; 30 TAC §290.109(c)(2)(F), and §290.122(c)(2)(A), and THSC, §341.033(d), by failing to collect at least five distribution coliform samples the month following a coliform-positive sample result and failed to provide public notification regarding the failure to conduct increase sampling; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and by failing to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed; and 30 TAC §290.122(c)(2)(A), by failing to provide public notification for failure to collect routine monitoring samples for the month of April 2012; PENALTY: $660; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: City of Paducah; DOCKET NUMBER: 2013-0663-PWS-E; IDENTIFIER: RN101385029; LOCATION: Paducah, Cottle County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source *Escherichia coli (E. coli)* samples from all active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample for the month of October 2010; by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC 290.109(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 sample result on a routine sample collected in December 2012; 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source *E. coli* samples from all active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample for the month of December 2012; 30 TAC §290.109(c)(2)(F), by failing to collect five routine distribution coliform samples the month following a coliform-positive sample result for the month of January 2013; and 30 TAC §290.122(c)(2)(A), by failing to post public notification for the failure to conduct increased coliform monitoring for the month of November 2011; PENALTY: $1,130; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(11) COMPANY: City of Throckmorton; DOCKET NUMBER: 2013-0813-PWS-E; IDENTIFIER: RN101410553; LOCATION: Throckmorton, Throckmorton County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.122(b)(2)(A), by failing to post public notification for the failure to comply with the maximum contaminant level for total trihalomethanes during the first quarter of 2011; 30 TAC §290.111(e)(1)(A) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to achieve a turbidity

level of the combined filter effluent that is less than 1.0 Nephelometric Turbidity Units (NTU) for one day in October 2012.; and 30 TAC §290.111(e)(1)(B) and THSC, §341.0315(c), by failing to achieve a turbidity level of the combined filter effluent that is less than 0.3 NTU in at least 95% of the samples tested in September and October 2012; PENALTY: $420; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(12) COMPANY: COWTOWN PETROLEUM LLC dba Cowtown Plaza; DOCKET NUMBER: 2013-1025-PST-E; IDENTIFIER: RN104473434; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3), (4) and (9) and Texas Health and Safety Code, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system and failed to prevent gasoline leaks detected by sight, sound, or smell anywhere in the Stage II vapor recovery system; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: CSCW GROUP LLC dba Cityview Car Wash; DOCKET NUMBER: 2013-0786-PST-E; IDENTIFIER: RN101556272; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: car wash with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: ECOLOGIST SERVICES & DISPOSITION, INCORPORATED; DOCKET NUMBER: 2013-0620-WQ-E; IDENTIFIER: RN104321328; LOCATION: Olmito, Cameron County; TYPE OF FACILITY: scrap and waste recycling facility; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization under Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR05000 to discharge storm water associated with industrial activities or coverage under a No Exposure Certification; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(15) COMPANY: Entergy Texas, Incorporated; DOCKET NUMBER: 2013-0982-PST-E; IDENTIFIER: RN102047032; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: emergency generator; 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; 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: $3,751; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Federal Bureau of Prisons; DOCKET NUMBER: 2013-0616-PWS-E; IDENTIFIER: RN102909090; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and by failing to submit to the TCEQ a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility by July 1 of each year; 30 TAC §290.113(e), by failing to timely provide the results of annual Stage 1 disinfectant byproduct level monitoring to the executive director for the 2009 and 2010 monitoring periods; 30 TAC §290.106(e), by failing to timely provide the results of annual nitrate monitoring to the executive director for the 2011 and 2012 monitoring periods; and 30 TAC §290.115(e), by failing to provide the results of quarterly Stage 2 disinfectant byproduct level monitoring to the executive director for the third and fourth quarters of 2012 monitoring period; PENALTY: $650; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: Hazem Hamad dba The General Store; DOCKET NUMBER: 2013-0290-PST-E; IDENTIFIER: RN102356136; LOCATION: Corsicana, Navarro 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; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Hoover Energy Texas LLC; DOCKET NUMBER: 2013-1124-AIR-E; IDENTIFIER: RN100542307; LOCATION: Fort Stockton, Pecos County; TYPE OF FACILITY: natural gas compression and treatment; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O1842, General Terms and Conditions, by failing to submit the permit compliance certification no later than 30 days after the end of the certification period; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 9900 W. IH-20, Ste. 100, Midland, Texas 79706, (432) 570-1359.

(19) COMPANY: IMMANUEL CHURCH OF AUSTIN; DOCKET NUMBER: 2012-1600-EAQ-E; IDENTIFIER: RN106407265; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: church/worship center; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(20) COMPANY: KAVIN RR, LLC dba Sunshine Travel Plaza; DOCKET NUMBER: 2013-0860-PST-E; IDENTIFIER: RN102378924; LOCATION: Hooks, Bowie County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $6,882; ENFORCEMENT COORDINATOR: Troy Warden, (512) 239-1050; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(21) COMPANY: Lucite International, Incorporated; DOCKET NUMBER: 2012-2622-AIR-E; IDENTIFIER: RN102736089; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: chemical manufacturing 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 (NSRP) Number 318, Special Conditions (SC) Number 5A, and Federal Operating Permit (FOP) Number O1959, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 14, by failing to record audio, visual, and olfactory inspections once per 12-hour shift; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), NSRP Numbers 19005 and PSD-TX-753, SC Number 1, and FOP Number O1959,

GTC and STC Number 14, by failing to comply with the sulfur dioxide (SO_2) maximum allowable emissions rate for the Spend Acid Recovery (SAR) Main Stack; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.13(a) and §60.84(a), THSC, §382.085(b), NSRP Number 19005 and PSD-TX-753, SC Number 13, and FOP Number O1959, GTC and STC Number 14, by failing to continuously measure and record the in-stack concentration of SO_2 and nitrogen oxides from the SAR Main Stack; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), NSRP Number 19003, SC Number 3, and FOP Number O1959, GTC and STC Number 14, by failing to prevent an emissions release from the methyl-methacrylate Dock Tank; PENALTY: $72,541; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: N.A.S.A. Enterprises, Incorporated dba Sweeny Stop; DOCKET NUMBER: 2013-1133-PST-E; IDENTIFIER: RN101884823; LOCATION: Sweeny, Brazoria 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; PENALTY: $3,375; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Naila Partners, Ltd. dba Handi Plus; DOCKET NUMBER: 2013-0822-PST-E; IDENTIFIER: RN101377158; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (UST) for releases at a frequency of at least once every month. Also, by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(24) COMPANY: Nalco Company; DOCKET NUMBER: 2013-0799-AIR-E; IDENTIFIER: RN106370463; LOCATION: Pampa, Gray County; TYPE OF FACILITY: oil and gas chemical storage and distribution site; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization to construct and operate a source of air emissions; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(25) COMPANY: Naylene Dillingham dba Mac & Ernie's Roadside Eatery; DOCKET NUMBER: 2013-0753-PWS-E; IDENTIFIER: RN104966239; LOCATION: Tarpley, Bandera County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.122(c)(2)(A), by failing to provide public notification regarding the failure to conduct increase routine coliform monitoring during the month of September 2010; 30 TAC §290.106(e), by failing to timely provide the results of annual nitrate sampling to the executive director for the 2011 monitoring period; and 30 TAC §290.106(c), by failing to collect the annual nitrate sampling for the monitoring period from January 1, 2012 - December 31, 2012; PENALTY: $328; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(26) COMPANY: PALO DURO SERVICE COMPANY, INCORPORATED dba Glider Base Estates PWS; DOCKET NUMBER: 2013-0802-PWS-E; IDENTIFIER: RN102324217; LOCATION: Fort Worth, Wise County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to timely mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and by failing to timely submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: $800; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Phillips 66 Company; DOCKET NUMBER: 2013-0904-AIR-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: petroleum refining; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Texas Health and Safety Code, §382.085(b), and Flexible Permit Numbers 9868A and PSDTX102M7, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(28) COMPANY: Prakash Risal dba David's Food Mart; DOCKET NUMBER: 2013-1129-PST-E; IDENTIFIER: RN102130770; LOCATION: Denison, Grayson 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; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (806) 353-9251.

(29) COMPANY: Sunny Flea Market, Incorporated; DOCKET NUMBER: 2013-0978-PWS-E; IDENTIFIER: RN102321312; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of February and August 2011; 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of September 2011 - November 2011, January 2012, June 2012, September 2012, and November 2012; and by failing to timely provide public notice of the failure to sample for the months of September and November 2012; PENALTY: $2,041; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Thirsty Parrot, LLC; DOCKET NUMBER: 2013-0215-PWS-E; IDENTIFIER: RN105232177; LOCATION: Hempstead, Waller County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(e)(1) and (h)(1), Texas Health and Safety Code, §341.035(a), and TCEQ Agreed Order Docket Number 2010-0903-PWS-E, Ordering Provision Number 2.c.ii., by failing to submit engineering plans and specifications and receive written approval prior to beginning construction of a new public water supply system; 30 TAC §290.41(c)(3)(A), and TCEQ Agreed Order Docket Number 2010-0903-PWS-E, Ordering Provision Number 2.c.i., by failing to submit well completion data for review and approval prior to placing a public drinking water well into service; PENALTY: $240; ENFORCEMENT COORDINATOR: Abigail

Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: VSW Properties, LLC dba South Winds Mobile Home Village; DOCKET NUMBER: 2013-0880-PWS-E; IDENTIFIER: RN101241412; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and by failing to submit to the executive director by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.113(e), by failing to provide the results of Stage 1 disinfectant by-product sampling to the executive director; 30 TAC §290.106(e), by failing to provide the results of triennial sampling for metals to the executive director for the monitoring period from January 1, 2009 - December 31, 2011; and 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2011 and 2012 monitoring periods; PENALTY: $470; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-201303705
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 3, 2013

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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 **October 14, 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 October 14, 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: City of Pasadena; DOCKET NUMBER: 2012-1977-PST-E; TCEQ ID NUMBER: RN100663889; LOCATION: 3124 Red Bluff Road, Pasadena, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and fleet refueling facility; 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: $4,500; 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: Hussain Ali d/b/a MS Express 1011; DOCKET NUMBER: 2012-0964-PST-E; TCEQ ID NUMBER: RN102266699; LOCATION: 628 West Hildebrand Avenue, San Antonio, Bexar 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: $2,500; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: LOTUS FOOD, INC. d/b/a The Right Choice 2; DOCKET NUMBER: 2013-0086-PST-E; TCEQ ID NUMBER: RN102375565; LOCATION: 8011 Midcrown Drive, San Antonio, Bexar 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); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the UST system; PENALTY: $3,505; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: PRODUCERS COOPERATIVE ELEVATOR; DOCKET NUMBER: 2012-2698-PST-E; TCEQ ID NUMBER: RN102789062; LOCATION: Northwest corner of Farm-to-Market Road 28 and Motley Street, Dougherty, Floyd County; TYPE OF FACILITY: inactive underground storage tank (UST) system; 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(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the USTs; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for review upon request by agency personnel; PENALTY: $7,944; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7902.

(5) COMPANY: QSI Custom Cabinets, L.P.; DOCKET NUMBER: 2012-1987-WQ-E; TCEQ ID NUMBER: RN105608509; LOCATION: 3800 Drossett Drive, Suite B, Austin, Travis County; TYPE OF FACILITY: cabinet manufacturing facility; RULES VIOLATED: 40 Code of Federal Regulations §122.26(c) and 30 TAC §281.25(a)(4),

by failing to maintain authorization to discharge storm water associated with industrial activities under either the Texas Pollutant Discharge Elimination System, Multi-Sector General Permit Number TXR050000, or No Exposure Certification Number TXRNEW446; PENALTY: $4,500; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Austin Regional Office, Post Office Box 13087, MC R-11, Austin, Texas 78711, (512) 339-2929.

(6) COMPANY: RUBI & SONS STORE INC DBA Food Mart Shell; DOCKET NUMBER: 2012-0155-PST-E; TCEQ ID NUMBER: RN102959764; LOCATION: 622 West Garland Street, Grand Saline, Van Zandt County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; and TWC, §26.3475(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: $4,375; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: WHITE BLUFF MARINA, INC. d/b/a White Bluff Marina Market; DOCKET NUMBER: 2013-0260-PST-E; TCEQ ID NUMBER: RN103730834; LOCATION: 1010 Golf Court, Whitney, Hill County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,880; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: You Dream We Build, Inc. d/b/a On The Way; DOCKET NUMBER: 2013-0608-PST-E; TCEQ ID NUMBER: RN101435709; LOCATION: 5101 Airport Freeway, 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(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $5,004; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201303706
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 3, 2013

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 14, 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 October 14, 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: D & D INTERNATIONAL, INC. d/b/a Handi Stop 86; DOCKET NUMBER: 2013-0395-PST-E; TCEQ ID NUMBER: RN100699016; LOCATION: 1250 Farm-to-Market Road 1092, Missouri City, Fort Bend County TYPE OF FACILITY: underground storage tank system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: $18,850; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: FLETCHER ANIMAL CLINIC, P.C. and Donald S. Fletcher, dba Cattail Creek Mobile Home Park; DOCKET NUMBER: 2012-1237-PWS-E; TCEQ ID NUMBER: RN102672854; LOCATION: intersection of Country Road 387 and Creek Side Drive, Stephenville, Erath County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(3)(A)(i) and (ii) and §290.122(c)(2)(A), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample and failed to provide public notice; Texas Health and Safety Code (THSC), §341.033(d) and 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A), by failing to collect at least five routine distribution coliform samples the month following a coliform-positive sample result and failed to provide public notice of the failure to conduct increase monitoring; THSC, §341.031(a) and 30 TAC §290.109(f)(3) and §290.122(c)(2)(A), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform and failed to provide public notice of the MCL exceedance; 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A), by failing to collect one raw groundwater source *Escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform-positive sample and failed to provide public notice of the failure to collect one raw groundwater sample; 30 TAC §290.110(e)(4)(A) and (f)(3) and

§290.122(c)(2)(A), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter and failed to provide public notice of the failure; 30 TAC §290.106(e) and §290.107(e), by failing to report the results for triennial metals, minerals, volatile organic contaminant, and synthetic organic contaminant monitoring to the executive director; 30 TAC §290.106(e), by failing to report the results of annual nitrate/nitrite monitoring to the executive director; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customer of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay annual Public Health Service fees; PENALTY: $5,070; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: HD Recycling, LLC; DOCKET NUMBER: 2013-0208-WQ-E; TCEQ ID NUMBER: RN106327521; LOCATION: 105 Dennis Road, Weatherford, Parker County; TYPE OF FACILITY: waste processing facility; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulation §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities; PENALTY: $6,250; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Jasper Cindi, Inc. d/b/a Bullfrogs Bar & Grill; DOCKET NUMBER: 2013-0754-PWS-E; TCEQ ID NUMBER: RN105973796; LOCATION: 4108 United States Highway 96 North, Jasper, Jasper County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.035(a) and 30 TAC §290.39(e)(1), (h)(1), and (m), and TCEQ DO Docket Number 2010-1498-PWS-E, Ordering Provision number 3.d., by failing to provide notification to the commission of the startup of a public water supply system and failed to submit engineering plans and specifications for a new public water supply system; 30 TAC §290.42(l), by failing to provide a plant operations manual for operator review and reference; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's well; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzers at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(f)(2), (3)(A)(i)(III), and (ii)(III), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.41(c)(3)(J), by failing to provide the well with a concrete sealing block that extends a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot; 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 as to minimize the drawing of contaminants into the well; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; and 30 TAC §290.109(c)(1)(B), by failing to collect routine distribution coliform samples at locations specified in the facility's monitoring plan; PENALTY: $1,891; 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.

(5) COMPANY: Jose Garcia; DOCKET NUMBER: 2011-2285-MSW-E; TCEQ ID NUMBER: RN106247869; LOCATION: five miles north of Highway 83 on Farm-to-Market Road 2360, La Grulla, Starr County; TYPE OF FACILITY: unauthorized scrap tire disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $15,000; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Leo Graves d/b/a Graves Tire Service; DOCKET NUMBER: 2012-1480-MLM-E; TCEQ ID NUMBER: RN106449002; LOCATION: 900 East Sabine Street, Carthage, Panola County; TYPE OF FACILITY: tire service facility; RULES VIOLATED: 30 TAC §328.58(d), by failing to obtain completed manifests from the transporter within 60 days after scrap tires or tire pieces were transported off-site; 30 TAC §324.4(1) and 40 Code of Federal Regulation §279.22(d), by failing to prevent the unauthorized disposal of used oil; PENALTY: $4,000; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: SAVS Investments, Inc. d/b/a Friday's General Store; DOCKET NUMBER: 2012-2141-PWS-E; TCEQ ID NUMBER: RN104711163; LOCATION: 7678 East United States Highway 290, Johnson City, Blanco 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), and TCEQ Agreed Order Docket Number 2010-1634-PWS-E, Ordering Provisions Numbers 2.a. - 2.c., by failing to collect routine distribution water samples for coliform analysis and failing to provide public notice of the failure to sample; THSC, §341.035(a) and 30 TAC §290.39(e)(1), (h)(1), and (c), and TCEQ DO Docket Number 2011-0635-PWS-E, Ordering Provisions Numbers 3.d.ii. and 3.f., by failing to submit engineering plans and specifications and obtain executive director approval prior to the construction of a new water system; THSC, §341.0315(c) and 30 TAC §290.46(d)(2)(A), §290.110(b)(4), and TCEQ DO Docket Number 2011-0635-PWS-E, Ordering Provisions Numbers 3.a.i. and 3.b.i., by failing to operate the disinfection equipment to continuously maintain a disinfectant residual of 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.110(c)(4)(A) and TCEQ DO Docket Number 2011-0635-PWS-E, Ordering Provisions Numbers 3.a.ii. and 3.b.i., by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; THSC, §341.0315(c) and 30 TAC §290.45(d)(2)A)(ii), and TCEQ DO Docket Number 2011-0635-PWS-E, Ordering Provisions Numbers 3.d.i. and 3.f., by failing to provide a minimum pressure tank capacity of 220 gallons; 30 TAC §290.106(e), by failing to report the results for triennial metals and minerals monitoring to the executive director; and 30 TAC §290.106(e), by failing to report the results of annual nitrate/nitrite monitoring to the executive director; PENALTY: $12,820; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Austin Regional Office, Post Office Box 13087, MC R-11, Austin, Texas 78711, (512) 339-2929.

TRD-201303707
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 3, 2013

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 14, 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/DOs are available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 14, 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: Michael Ung d/b/a Mikes Food Mart; DOCKET NUMBER: 2013-0575-PST-E; TCEQ ID NUMBER: RN102784329; LOCATION: 102 Highway 8 South, Douglassville, Cass 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(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for review upon request by agency personnel; PENALTY: $8,750; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: MYKAWA ENTERPRISE, INC. d/b/a Crown Mart; DOCKET NUMBER: 2012-0550-PST-E; TCEQ ID NUMBER: RN102058146; LOCATION: 6402 Mykawa Road, Houston, Harris County; TYPE OF FACILITY: 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 UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10, by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $5,100; 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.

(3) COMPANY: PINEDALE CORPORATION d/b/a Sammy's; DOCKET NUMBER: 2012-2661-PST-E; TCEQ ID NUMBER: RN101840619; LOCATION: 10310 Farm-to-Market Road 2025, Cleveland, Liberty County; TYPE OF FACILITY: 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: $3,750; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: RANA INVESTMENT, INC. d/b/a Truck Stop Mart 2; DOCKET NUMBER: 2012-1734-PST-E; TCEQ ID NUMBER: RN102284528; LOCATION: 2212 Houston Boulevard, Houston, Harris County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii), (C), and (5)(A), by failing to obtain a delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership change; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $12,131; 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.

TRD-201303708

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 3, 2013

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 307

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 307, Texas Surface Water Quality Standards, §§307.2 - 307.4 and 307.6 - 307.10, under the requirements of Texas Government Code, Chapter 2001, Subchapter B. The proposed rulemaking would provide a periodic public review and revision of the Texas Surface Water Quality Standards, as provided for in the Texas Water Code, §26.023, and as required by the Federal Clean Water Act, §303(c).

The commission proposes substantive and editorial changes, the addition of a definition for industrial cooling water areas, clarification regarding the allowance of different mixing zone sizes for specific numeric criteria, and to designate site-specific criteria for: 1) eight additional streams in Appendix D; 2) two additional site-specific toxic criteria in Appendix E; and 3) 11 additional site-specific criteria in Appendix G of §307.10.

The commission will hold a public hearing on this proposal in Austin on October 17, 2013, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Public Comment for Proposed Rule Revisions

In addition to the hearing, written comments on the proposed revisions to 30 TAC Chapter 307 may be submitted to Michael Parrish, 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 2012-001-307-OW. The comment period closes October 24, 2013. Copies of the proposed rulemaking 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 Debbie Miller, Rule Coordinator, Water Quality Planning Division, at (512) 239-1703.

TRD-201303621
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 28, 2013

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Notice of Water Quality Applications

The following notices were issued on August 23, 2013, through August 30, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF BERTRAM has applied for a renewal of TCEQ Permit No. WQ0011669001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 144,000 gallons per day via irrigation and evaporation of 50.8 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 2110 State Highway 29 West, which is located west of the City of Bertram on the south side of Highway 29, approximately 1.7 miles west of the intersection of State Highway 29 and Farm-to-Market Road 1174 North in Burnet County, Texas 78605.

GULF COAST UTILITY CO LLC has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012780001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day and a change to authorize processing of domestic wastewater other than from the collection system. The facility is located approximately 1900 feet north of State Highway 6 and 2 miles west of the intersection of State Highway 6 and State Highway 288 in Brazoria County, Texas 77583.

2006 MUSTANG CREEK DEVELOPMENT INC has applied for a renewal of TPDES Permit No. WQ0014641001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility will be located approximately 2,600 feet west of State Highway 288 and 2,550 feet north of County Road 58 in Brazoria County, Texas 77578.

CITY OF MONT BELVIEU has applied for a renewal of TPDES Permit No. WQ0014807001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 10100 Eagle Drive, approximately 1.4 miles north of Interstate Highway 10 and 0.6 mile east of Eagle Drive on the east side of Mont Belvieu in Chambers County, Texas 77580.

AUC GROUP LP has applied for a new permit, TPDES Permit No. WQ0015077001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0014868001, which expired November 1, 2012. The facility will be located approximately 9,700 feet south-southeast of the intersection of Chimney Rock and McHard Road (Farm-to-Market Road 2234) in Fort Bend County, Texas 77053.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201303716
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 4, 2013

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Semiannual Report due July 15, 2013, for Candidates and Officeholders

Christopher D. Christal, P.O. Box 12104, San Antonio, Texas 78212-0104

Holly Crampton, 505 Lamar St., Wichita Falls, Texas 76301-2510

Susan Delgado, 2284 Jean St., Houston, Texas 77023-5009

Christina Zelda Flores, 721 E. 2nd St., Alice, Texas 78332-4847

Michael A. Franks, 20230 Kings Camp Dr., Katy, Texas 77450-4322

Gerardo A. Garza, 1509 Summit Dr., Laredo, Texas 78045-6319

Colin J. Guerra, 1401 Hill St., Bastrop, Texas 78602-3010

Susan L. Hawk, 133 N. Riverfront Blvd. #LB34, Dallas, Texas 75207-4300

Tonya J. Holt, 4200 Marshall Ct., Plano, Texas 75093-6640

Joaquin Martinez, 2033 Santa Rosa St., Houston, Texas 77023-2534

Eric L. Kirkland, P.O. Box 9, Walburg, Texas 78673-0009

Jack C. Lee, P.O. Box 980563, Houston, Texas 77098-0563

Sherri L. Little, 10803 Poinsettia Rd., Gilmer, Texas 75644-5934

Richard F. Melendrez, 3030 Altura Ave., El Paso, Texas 79930-3326

Jesus A. Mendoza, 2560 King Arthur Blvd., Ste. 124 PMB 128, Lewisville, Texas 75056-5818

Choco G. Meza, 13707 Cape Bluff, San Antonio, Texas 78216-1606

Sergio C. Mora, Jr., 119 W. Village Blvd., Laredo, Texas 78041-2211

Donald R. Mullins, 1431 Dominion Dr., Katy, Texas 77450-4311

David L. Nigh, 494 S. Seguin Ave., Ste. 201, New Braunfels, Texas 78130-7653

Bruce Priddy, 17327 Davenport Rd., Dallas, Texas 75248-1367

Rebecca E. RuBane, 847 E. Harrison St., Brownsville, Texas 78520-7120

Heriberto Silva, P.O. Box 249, Garciasville, Texas 78547-0249

Matthew D. Stillwell, 13033 Pond Springs Rd., Ste. 101, Austin, Texas 78729-7135

Ernest B. White III, 3808 Kimballdale Dr., Dallas, Texas 75233-2901

TRD-201303646
David Reisman
Executive Director
Texas Ethics Commission
Filed: August 29, 2013

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Department of Family and Protective Services

Request for Proposal for Consulting Services

RFP #530-14-84910

I. The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Family and Protective Services (DFPS), seeks a consultant to conduct an operational review of its Child Protective Services (CPS) Division. The operational review will assess the strengths and weaknesses of internal operations of the division, and offer recommendations as to how it can be managed and operated more effectively and efficiently within the mission of CPS to protect children from abuse and neglect. In accordance with Texas Government Code, Chapter 2254, HHSC is issuing a Request for Proposal (RFP) #530-14-84910.

II. The consultant shall perform a comprehensive review of the internal operations of the CPS division. The review should offer recommendations as to how it can be managed and operated more effectively and efficiently, while remaining in accordance with state and federal law. The consultant should provide a framework for conducting the review of the CPS operations, including allocation of staff, decision-making, work-flow, and general business processes. This should also include policy, procedures, guidelines, and relevant support structures that may include training, hiring practices, contracting, and finance.

Specifically, the review should: (1) identify strengths and best practices; (2) identify areas in need of positive improvement, describing the effect of the "as is" challenge on clients, employees, and stakeholders; (3) recommend an improvement strategy ("to-be") with specific recommendations to correct the problems/issues and to streamline procedures, case progression, and workflow along with rationale about how and why this improvement is needed; (4) identify the cost of present practices and the benefits to be derived through implementation of the recommendations; (5) identify areas to maximize resources (Title IV-E funding, etc.); and (6) develop an implementation plan that identifies immediate and longer term changes, timelines, required resources to execute the change, and key communication messages to facilitate the shift to an improved way of working.

The request for proposal (RFP) is located in full on the Electronic State Business Daily (ESBD) under link at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=107952.

III. The successful contractor will be expected to perform a comprehensive review of the internal operations of the CPS division. The review should offer recommendations as to how it can be managed and operated more effectively and efficiently, while remaining in accordance with state and federal law. The consultant should provide a framework for conducting the review of the CPS operations, including allocation of staff, decision-making, work-flow, and general business processes. This should also include policy, procedures, guidelines and relevant support structures that may include training, hiring practices, contracting and finance.

IV. HHSC's Sole Point-of-Contact for Procurement is: Dana Nichols; Procurement Project Manager; Health and Human Services Commission; 4405 N Lamar Blvd., Mail Code 2020; Austin, Texas 78756; (512) 424-6596; dana.nichols@hhsc.state.tx.us.

V. All questions regarding the RFP must be sent in writing to the above-referenced contact by the deadline set forth in RFP Section 1.3. HHSC will post all written questions received with HHSC's responses on the ESBD website on the deadline set forth in RFP Section 1.3, or as they become available. All proposals must be received at the above-referenced address on or before the deadline set forth in RFP Section 1.3. Proposals received after this time and date will not be considered.

VI. HHSC will hold a vendor conference on the date and time indicated in Section 1.3 in the Public Hearing Room, Winters Building,

701 West 51st Street, Austin, Texas 78751. Vendor conference attendance is strongly recommended, but is not required.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-201303710
Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Filed: September 3, 2013

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission is submitting to the Centers for Medicare and Medicaid Services a request for an amendment to the Medically Dependent Children Program (MDCP) waiver, under the authority of §1915(c) of the Social Security Act. The MDCP waiver is currently approved for the five-year period beginning September 1, 2012, and ending August 31, 2017. The proposed effective date for the amendment is September 1, 2013.

The MDCP provides home and community-based services to persons under age 21 who are medically fragile and meet the requirements for nursing facility care. Services include respite, adaptive aids, minor home modifications, financial management services, transition assistance services, and adjunct support services. Texas uses the MDCP waiver to provide services to Texans in the least restrictive environment possible. These environments include the individual's or a family member's home, a foster care home, or an assisted living facility.

This amendment request proposes to make the following changes:

1. Remove cost containment service limits. The cost containment service limits were required by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session, 2011 (Article II, Health and Human Services) because those limits were removed by the 2014-2015 General Appropriations Act, S.B. 1, 83rd Legislature, Regular Session, 2013 (Article II, Health and Human Services). The following services no longer have service limits: respite and family support services.

2. Allow individuals to transfer between waivers when medically necessary for services to continue to ensure health and safety.

3. Update respite and flexible family support service provider requirements in the consumer directed services option to match requirements of provider-managed service providers.

4. Add employment assistance and supported employment, including the consumer directed services option.

5. Change the name from consumer directed services agencies to financial management services agencies.

1. Remove the reference to the Resource Utilization Group (RUG) rates due to ventilator use.

2. Add information that the backup plan is reviewed by the Department of Aging and Disability Services case manager or the MDCP nurse during the face-to-face annual reassessment visit and at the six month monitoring.

3. All MDCP assessments are now manually reviewed by a Texas Medicaid & Healthcare Partnership nurse.

4. The RUG value is now automatically determined by an algorithm.

5. Update point-in-time limits to reflect the number of individuals who can be served in the waiver at a specific point-in-time.

The Texas Health and Human Services Commission is requesting that the Centers for Medicare & Medicaid Services approve this waiver amendment beginning September 1, 2013, and ending August 31, 2017. The waiver amendment application maintains cost neutrality for federal years 2013 through 2017.

To obtain copies of the proposed waiver amendment, interested parties may contact JayLee Mathis by mail at Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-370, Austin, Texas 78708-5200, phone (512) 462-6289, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201303722
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: September 4, 2013

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Department of State Health Services

Notice of Request for Information Concerning Immigration Counsel

In accordance with the provisions of Texas Government Code, Chapter 2254, the Department of State Health Services (DSHS) requests information from law firms interested in representing DSHS, including its regional offices and state hospitals, in the area of immigration law. DSHS is composed of its Central Office in Austin, eight regional offices, and a variety of healthcare facilities including a primary care outpatient clinic, an infectious disease hospital, and nine state psychiatric hospitals.

This Request for Information (RFI) is issued to aid DSHS in establishing a referral list from which DSHS, by and through its Office of General Counsel, will select appropriate counsel for representation of DSHS on specific matters as the need arises through August 31, 2014. DSHS invites responses to this RFI from qualified firms for the provision of legal services under the direction and supervision of the DSHS Office of General Counsel. Subject to approval by the Texas Attorney General, DSHS may engage outside counsel with experience in the following area of law:

Immigration Law. Provide representation, advice and assistance regarding immigration law matters, including but not limited to any employer-required action associated with the lawful hiring of individuals who are not naturalized citizens of the United States. Such assistance could include, for example, petitioning for nonimmigrant visas (including H-1B) and matters associated with the processing of those visas; providing advice associated with hiring of medical students on J-1 visas, or the contracting with such individuals for the provision of medical services to persons served by DSHS; petitioning for employer sponsored permanent residence; representation before the Department of Labor, including labor condition applications and labor certifications; and interaction with and representation before applicable governmental agencies, including the U.S. Citizenship and Immigration Services and the U.S. Department of Labor.

Responses. Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in the specific area of law for which the firm is responding; (2) the expertise of the attorneys that would be assigned to work on such matters;

(3) the submission of fee information in the form of a range of hourly rates for each billing class of personnel who may be assigned to perform services in relation to a DSHS matter, and/or a proposed flat fee or other fee arrangement; (4) a description of the efforts made by the firm to encourage and develop the participation of minorities and women in the provision of both the firm's legal services generally and the specific area of immigration law in particular; (5) information regarding potential conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to DSHS or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); (6) the firm's agreement with the billing guidelines, which among other things set forth the allowable billable expenses; and (7) confirmation of willingness to comply with policies, directives, and guidelines of DSHS and the Attorney General of the State of Texas. Responses will be reviewed by the DSHS Office of General Counsel and appropriate agency staff. Should DSHS choose to contract with your firm for outside counsel services, contact will be made via email or the U.S. Postal Service.

Person to Contact. Questions and responses to this RFI should be addressed to Barbara H. Owens, Assistant General Counsel, Office of General Counsel, Department of State Health Services, P.O. Box 149347 (Mail Code 1919), Austin, Texas 78714-9347 or Barbara.Owens@dshs.state.tx.us. Alternatively, questions and responses may be sent via email to Legal Assistant Betsy Boyt at Betsy.Boyt@dshs.state.tx.us.

Deadline for Submission of Response. All responses must be completed and submitted to the Office of General Counsel of DSHS no later than 11:59 p.m., daylight saving time, on September 27, 2013.

TRD-201303727
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: September 4, 2013

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Texas Department of Housing and Community Affairs

2014 - 2015 Texas Bootstrap Loan Program Notice of Funding Availability

I. Source of Housing Trust Funds.

The Housing Trust Fund (HTF) was established by the 72nd Legislature, Senate Bill 546, Texas Government Code, §2306.201, to create affordable housing for low- and very low-income households. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the "Department"), through its Office of Colonia Initiatives, announces the availability of approximately $6,000,000 of State of Texas Housing Trust Funds for the Texas Bootstrap Loan Program (Bootstrap). For Fiscal Year (FY) 2014, approximately $3,000,000 will be available on **October 1, 2013.** For FY 2015, the remaining estimated $3,000,000 will be available for reservation on approximately June 4, 2014, however funds will not be available for distribution until September 3, 2014.

The purpose of the Bootstrap Program is to purchase land and/or build new residential or improve existing residential housing through self-help construction methodologies for Owner-Builders, including persons with special needs, whose household income does not exceed 60% of the Area Median Family Income.

In order to reserve Program funds on behalf of Owner-Builders, nonprofit organizations must undergo certification as a "Nonprofit Owner-Builder Housing Provider" by the Department and execute a loan origination agreement. Two-thirds of the funds are set aside for Owner-Builders with property in census tracts with median incomes not exceeding 75% of the state median income per the most recent statistics available. The remaining one-third will be released statewide.

III. Application Deadline and Availability.

The "2014 - 2015 Texas Bootstrap Loan Program" NOFA is posted on the Department's website: http://www.tdhca.state.tx.us/oci/bootstrap.jsp. Subscribers to the Department's LISTSERV will receive notification that the NOFA is posted.

Questions regarding the Bootstrap Program NOFA may be addressed to Raul Gonzales at (512) 475-1473 or raul.gonzales@tdhca.state.tx.us.

TRD-201303717
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 4, 2013

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Texas Department of Insurance

Notice of Hearing

The commissioner of insurance will hold a public hearing under Insurance Code Sections 2703.202(a) and 2703.206, Docket No. 2753, at 9:00 a.m. on Friday, November 15, 2013, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe St., Austin, Texas. The commissioner will adjust title insurance premium rates for the 2014 calendar year to reimburse Texas title insurers for amounts paid in assessments to the Texas Title Insurance Guaranty Association (TTIGA) in 2013.

In August 2012, the commissioner designated Southern Title Insurance Company as impaired. Insurance Code Section 2602.201 requires TTIGA to estimate the amount required to pay all covered claims for an impaired title insurance company and to assess title insurers for the needed amount. To ensure that TTIGA had sufficient funds to pay Southern Title claims, TTIGA assessed title insurers for $8 million in April 2013.

On August 23, 2013, the TTIGA board voted to refund $5.5 million, reducing the ultimate assessment to $2.5 million. Section 2602.210 entitles title insurers to recoup the assessment in their rates over the succeeding calendar year. TDI must hold a hearing to adjust the 2014 title insurance premium rates to allow for the recoupment.

This hearing will address only the recoupment rate. Comments must be directly related to that issue. If you wish to submit written comments, analyses, or other information related to the filing, please do so by 5:00 p.m. on Wednesday, November 13, 2013. You must provide two copies of your submission. Send one copy to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or email it to ChiefClerk@tdi.texas.gov. Send the other copy to J'ne Byckovski, Chief Actuary, P.O. Box 149104, Mail Code 105-5F, Austin, Texas 78714-9104 or email it to J'ne.Byckovski@tdi.texas.gov.

You may also present relevant written or oral comments at the hearing.

TRD-201303691

Sara Waitt
General Counsel
Texas Department of Insurance
Filed: August 30, 2013

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Legislative Budget Board

Request for Qualifications

The Legislative Budget Board (LBB) issues this Request for Qualifications (RFQ) to pre-qualify vendors to assist the LBB in conducting a variety of performance reviews of Texas School, Charter School, and Community College Districts (Districts). Vendors may apply to be pre-qualified to provide expertise related to one or more of the functional areas listed in Section 3.2 of the RFQ.

Contact: The LBB is the Issuing Office and the sole point of contact for the RFQ. Questions concerning the RFQ must be in writing and addressed to:

Legislative Budget Board

(512) 475-2902 (fax)

Email: contract.manager@lbb.state.tx.us

Closing Date: Applications must be received in the issuing office at the address specified above no later than 5:00 p.m. CZT, on August 31, 2014. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: The Team Manager with the assistance of the Contract Administrator will review all applications for compliance, experience, and thoroughness. All applications will be evaluated under the following criteria: Knowledge of Functional Area and Review Process and Experience Related to Functional Area and Review Process.

The LBB reserves the right to accept or reject any or all applications submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFQ. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFQ.

The anticipated schedule of events is as follows: This is an "ongoing" process of pre-qualifying applicants.

TRD-201303715
Bill Parr
Assistant Director
Legislative Budget Board
Filed: September 4, 2013

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Texas Lottery Commission

Instant Game Number 1524 "Loteria"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1524 is "LOTERIA™". The play style is "row/column".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1524 shall be $3.00 per Ticket.

1.2 Definitions in Instant Game No. 1524.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: THE ARROWS SYMBOL, THE BELL SYMBOL, THE BOOT SYMBOL, THE CACTUS SYMBOL, THE CANOE SYMBOL, THE CROWN SYMBOL, THE DEER SYMBOL, THE DRUM SYMBOL, THE FISH SYMBOL, THE FLOWERPOT SYMBOL, THE FROG SYMBOL, THE HAND SYMBOL, THE LADDER SYMBOL, THE MERMAID SYMBOL, THE MOON SYMBOL, THE MUSICIAN SYMBOL, THE PARROT SYMBOL, THE PEAR SYMBOL, THE PITCHER SYMBOL, THE ROOSTER SYMBOL, THE ROSE SYMBOL, THE STAR SYMBOL, THE SUN SYMBOL, THE TREE SYMBOL, THE UMBRELLA SYMBOL, THE CELLO SYMBOL, THE WATERMELON SYMBOL, THE WORLD SYMBOL and THE BARREL SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1524 - 1.2D

PLAY SYMBOL	CAPTION
THE ARROWS SYMBOL	THE ARROWS
THE BELL SYMBOL	THE BELL
THE BOOT SYMBOL	THE BOOT
THE CACTUS SYMBOL	THE CACTUS
THE CANOE SYMBOL	THE CANOE
THE CROWN SYMBOL	THE CROWN
THE DEER SYMBOL	THE DEER
THE DRUM SYMBOL	THE DRUM
THE FISH SYMBOL	THE FISH
THE FLOWERPOT SYMBOL	THE FLOWERPOT
THE FROG SYMBOL	THE FROG
THE HAND SYMBOL	THE HAND
THE LADDER SYMBOL	THE LADDER
THE MERMAID SYMBOL	THE MERMAID
THE MOON SYMBOL	THE MOON
THE MUSICIAN SYMBOL	THE MUSICIAN
THE PARROT SYMBOL	THE PARROT
THE PEAR SYMBOL	THE PEAR
THE PITCHER SYMBOL	THE PITCHER
THE ROOSTER SYMBOL	THE ROOSTER
THE ROSE SYMBOL	THE ROSE
THE STAR SYMBOL	THE STAR
THE SUN SYMBOL	THE SUN
THE TREE SYMBOL	THE TREE
THE UMBRELLA SYMBOL	THE UMBRELLA
THE CELLO SYMBOL	THE CELLO
THE WATERMELON SYMBOL	THE WATERMELON
THE WORLD SYMBOL	THE WORLD
THE BARREL SYMBOL	THE BARREL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $3.00, $4.00, $7.00, $10.00, $17.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $33.00, $50.00, $80.00 or $300.

H. High-Tier Prize - A prize of $3,000 or $33,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1524), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1524-0000001-001.

K. Pack - A Pack of "LOTERIA™" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LOTERIA™" Instant Game No. 1524 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 "LOTERIA™" Instant Game is determined once the latex on the Ticket is scratched off to expose up to 30 (thirty) Play Symbols. The player scratches off the CALLER'S CARD area to reveal 14 symbols. The player scratches only the symbols on the LOTERIA™ CARD that match the symbols revealed on the CALLER'S CARD to reveal a bean. The player reveals 4 beans in any complete horizontal or vertical line in the LOTERIA™ CARD to win the prize for that line. El jugador raspa las CARTAS DEL GRITON para revelar14 símbolos. El jugador raspa solamente los símbolos en la CARTA de LOTERIA™ que son iguales a los símbolos revelados en las CARTAS DEL GRITON para reveler un frijol. El jugador revela 4 frijoles en cualquier línea completa horizontal o vertical en la CARTA de LOTERIA™ para ganar el premio para esa línea. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 30 (thirty) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 30 (thirty) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Texas Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets will not have identical play data, spot for spot.

B. A Ticket may win up to three (3) times per the prize structure.

C. No adjacent Tickets will contain identical CALLER'S CARD Play Symbols in exactly the same locations.

D. No duplicate Play Symbols in the CALLER'S CARD play area.

E. There will be no occurrence of all 4 symbols in either diagonal matching the CALLER'S CARD symbols.

F. At least 8, but no more than 12, CALLER'S CARD Play Symbols will match a symbol on the LOTERIA™ CARD on a Ticket.

G. There will be no duplicate Play Symbols on a LOTERIA™ CARD as indicated in the artwork section.

H. Each LOTERIA™ CARD will have an occurrence of the rooster symbol as indicated in the artwork section.

2.3 Procedure for Claiming Prizes.

A. To claim a "LOTERIA™" Instant Game prize of $3.00, $4.00, $7.00, $10.00, $17.00, $20.00, $30.00, $33.00, $50.00, $80.00 or $300, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $33.00, $50.00, $80.00 or $300 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not

validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LOTERIA™" Instant Game prize of $3,000 or $33,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LOTERIA™" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "LOTERIA™" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "LOTERIA™" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,160,000 Tickets in the Instant Game No. 1524. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1524 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	2,822,400	7.14
$4	604,800	33.33
$7	537,600	37.50
$10	336,000	60.00
$17	336,000	60.00
$20	336,000	60.00
$30	33,600	600.00
$33	16,800	1,200.00
$50	15,960	1,263.16
$80	13,440	1,500.00
$300	10,080	2,000.00
$3,000	300	67,200.00
$33,000	40	504,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.98. 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. 1524 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. 1524, 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-201303647
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 29, 2013

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Instant Game Number 1566 "What's Your Number?"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1566 is "WHAT'S YOUR NUMBER?" The play style is "row/column/diagonal".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1566 shall be $1.00 per Ticket.

1.2 Definitions in Instant Game No. 1566.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $500, $3,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, STAR SYMBOL, RAINBOW SYMBOL, TREASURE CHEST SYMBOL, MONEY BAG SYMBOL, COIN SYMBOL and STACK OF CASH 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. 1566 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUN
$3,000	THR THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
STAR SYMBOL	STAR
RAINBOW SYMBOL	RAINBW
TREASURE CHEST SYMBOL	CHEST
MONEY BAG SYMBOL	MNYBAG
COIN SYMBOL	COIN
STACK OF CASH SYMBOL	2XPRIZE

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $8.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $40.00, $50.00, $100 or $500.

H. High-Tier Prize - A prize of $3,000.

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 (1566), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1566-0000001-001.

K. Pack - A Pack of "WHAT'S YOUR NUMBER?" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of five (5). Ticket 001 to 005 will be on the top page; Tickets 006 to 010 on the next page etc.; and Tickets 146 to 150 will be on the last page. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a 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 "WHAT'S YOUR NUMBER?" Instant Game No. 1566 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 "WHAT'S YOUR NUMBER?" Instant Game is determined once the latex on the Ticket is scratched off to expose 11 (eleven) Play Symbols. If a player reveals 3 matching numbers Play Symbols in any one row, column or diagonal, the player wins PRIZE in PRIZE box. If a player wins and also reveals a "STACK OF CASH" Play Symbol in the BONUS box, the player wins DOUBLE the PRIZE in PRIZE box. 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 11 (eleven) 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 11 (eleven) 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 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) 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 Texas 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 one (1) time.

D. The "STAR" Play Symbol, "RAINBOW" Play Symbol, "TREASURE CHEST" Play Symbol, "MONEY BAG" Play Symbol, "COIN" Play Symbol and the "STACK OF CASH" Play Symbol will only appear in the BONUS box.

E. Each Ticket will contain one Play Symbol which appears four (4) or five (5) times in the main play area.

F. There will not be more than two (2) matching Play Symbols other than the one symbol which appears four (4) or five (5) times (see restriction #12).

G. Non-Winning Tickets will not contain four (4) matching Play Symbols in all four corners.

H. Non-Winning Tickets will always contain either a "STAR" Play Symbol, a "RAINBOW" Play Symbol, a "TREASURE CHEST" Play Symbol, a "COIN" Play Symbol or a "MONEY BAG" Play Symbol in the BONUS box.

I. Winning Tickets will only contain one (1) winning combination.

J. Winning Tickets will have three (3) matching Play Symbols as the winning Play Symbol in the same ROW, COLUMN or DIAGONAL.

K. On Tickets winning a single prize, either a "STAR" Play Symbol, a "RAINBOW" Play Symbol, a "TREASURE CHEST" Play Symbol, a "COIN" Play Symbol or a "MONEY BAG" Play Symbol will appear in the BONUS box.

L. On Tickets winning DOUBLE the PRIZE, the "STACK OF CASH" Play Symbol will appear in the BONUS box.

M. The "STACK OF CASH" Play Symbol will only appear in the BONUS box on Tickets winning in the main play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "WHAT'S YOUR NUMBER?" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $8.00, $10.00, $20.00, $40.00, $50.00, $100 or $500, a claimant shall sign the back of the Ticket in the space

designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $40.00, $50.00, $100 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WHAT'S YOUR NUMBER?" Instant Game prize of $3,000, 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 "WHAT'S YOUR NUMBER?" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "WHAT'S YOUR NUMBER?" 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 "WHAT'S YOUR NUMBER?" 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 12,240,000 Tickets in the Instant Game No. 1566. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1566 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,142,400	10.71
$2	884,000	13.85
$4	340,000	36.00
$5	136,000	90.00
$8	108,800	112.50
$10	54,400	225.00
$20	40,800	300.00
$40	850	14,400.00
$50	476	25,714.29
$100	238	51,428.57
$500	102	120,000.00
$3,000	10	1,224,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.52. 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. 1566 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. 1566, 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-201303648
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 29, 2013

♦ ♦ ♦

Instant Game Number 1621 "Instant Millions"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1621 is "INSTANT MILLIONS". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1621 shall be $20.00 per Ticket.

1.2 Definitions in Instant Game No. 1621.

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: CHECK SYMBOL, CHEST SYMBOL, STACK OF COINS SYMBOL, COMPASS SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, EMERALD SYMBOL, POT OF GOLD SYMBOL, GOLD BAR SYMBOL, DOLLAR BILL SYMBOL, MONEY BAG SYMBOL, NECKLACE SYMBOL, PIGGY BANK SYMBOL, SAFE SYMBOL, RING SYMBOL, ROLL OF BILLS SYMBOL, SILVER BAR SYMBOL, TROPHY SYMBOL, WALLET SYMBOL, STAR SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10X SYMBOL, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, $20.00, $25.00, $50.00, $100, $200, $500, $1,000, $5,000, $10,000 and $ONE MILL SYMBOL.

D. Play Symbols Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1621 - 1.2D

PLAY SYMBOL	CAPTION
CHECK SYMBOL	CHECK
CHEST SYMBOL	CHEST
STACK OF COINS SYMBOL	COINS
COMPASS SYMBOL	COMPAS
CROWN SYMBOL	CROWN
DIAMOND SYMBOL	DMND
EMERALD SYMBOL	EMERALD
POT OF GOLD SYMBOL	PTGOLD
GOLD BAR SYMBOL	GOLD
DOLLAR BILL SYMBOL	MONEY
MONEY BAG SYMBOL	MBAG
NECKLACE SYMBOL	NCKLACE
PIGGY BANK SYMBOL	PIGBNK
SAFE SYMBOL	SAFE
RING SYMBOL	RING
ROLL OF BILLS SYMBOL	ROLL
SILVER BAR SYMBOL	SILVBR
TROPHY SYMBOL	TROPHY
WALLET SYMBOL	WALLET
STAR SYMBOL	STAR
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10X SYMBOL	WINX10
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX

27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$500	FIV HUND
$1,000	ONE THOU
$5,000	FIV THOU
$10,000	10 THOU
$ONE MILL SYMBOL	ONE MIL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000, $10,000 or $1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1621), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1621-0000001-001.

K. Pack - A Pack of "INSTANT MILLIONS" Instant Game Tickets contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 025 while the other fold will show the back of Ticket 001 and front of 025.

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 "INSTANT MILLIONS" Instant Game No. 1621 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 "INSTANT MILLIONS" Instant Game is determined once the latex on the Ticket is scratched off to expose 62 (sixty-two) Play Symbols. FAST MONEY GAMES: If a player reveals 2 matching Play Symbols within a game, the player wins $50, $100 or $500 instantly for that game. KEY NUMBER MATCH GAME: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 62 (sixty-two) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 62 (sixty-two) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 62 (sixty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 62 (sixty-two) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Texas Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. No more than four matching non-winning Prize Symbols on a Ticket.

C. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.

D. FAST MONEY GAMES: No matching non-winning Play Symbols across all three games.

E. FAST MONEY GAMES: No games will contain the same winning Play Symbol as another game.

F. FAST MONEY GAMES: A game will contain two matching Play Symbols only as dictated by the prize structure.

G. KEY NUMBER MATCH GAME: No duplicate WINNING NUMBERS Play Symbols on a Ticket.

H. KEY NUMBER MATCH GAME: No duplicate non-winning YOUR NUMBERS Play Symbols on a Ticket.

I. KEY NUMBER MATCH GAME: A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

J. KEY NUMBER MATCH GAME: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

K. KEY NUMBER MATCH GAME: The "10X" (win x 10) Play Symbol will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "INSTANT MILLIONS" Instant Game prize of $20.00, $25.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100, $200 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "INSTANT MILLIONS" Instant Game prize of $1,000, $5,000, $10,000 or $1,000,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "INSTANT MILLIONS" Instant Game prize, the claimant must sign the winning Ticket, thor-

oughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "INSTANT MILLIONS" 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 "INSTANT MILLIONS" 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 4,080,000 Tickets in the Instant Game No. 1621. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1621 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$20	652,800	6.25
$25	163,200	25.00
$50	489,600	8.33
$100	76,500	53.33
$200	17,170	237.62
$500	4,250	960.00
$1,000	340	12,000.00
$5,000	170	24,000.00
$10,000	20	204,000.00
$1,000,000	5	816,000.00

*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 2.91. 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. 1621 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. 1621, 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-201303649
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 29, 2013

♦ ♦ ♦

Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Ecology Services, Inc. (TLLRWDCC #1-0047-00)

10427 Hickory Path Way

Knoxville, TN 37922

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by September 30, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201303698
Leigh Ing
Executive Director
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: September 3, 2013

♦ ♦ ♦

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

PG&E Diablo Canyon Power Plant (TLLRWDCC #1-0048-00)

P.O. Box 56

Avila Beach, CA 93424

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by September 30, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201303699
Leigh Ing
Executive Director
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: September 3, 2013

♦ ♦ ♦

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Sacramento Municipal Utility District (TLLRWDCC #1-0049-00)

14440 Twin Cities Road

Herald, CA 95638

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by September 30, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201303700
Leigh Ing
Executive Director
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: September 3, 2013

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 23, 2013, for a state-issued certificate of franchise authority (SICFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Alpheus Communications, LLC for a State-Issued Certificate of Franchise Authority, Project Number 41784.

The requested SICFA service area consists of the City of Houston municipal boundaries.

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 through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 41784.

TRD-201303701
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 3, 2013

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 28, 2013, BorderComm Partners, L.P. (applicant) filed an application to amend service provider certificate of operating authority (COA) Number 60662. Applicant seeks approval to reflect a change in ownership/control whereby Transtelco Acquisitions, Inc. will acquire 100% of the partnership interests in Applicant. Applicant will remain a separate legal entity and will continue to provide telecommunications services in Texas under its current name.

Docket Title and Number: Application of BorderComm Partners, L.P. for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 41795.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than September 20, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 41795.

TRD-201303702
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 3, 2013

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Notice of Petition for Good Cause Exceptions

Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint petition filed on August 26, 2013, for good cause exceptions to Oncor's Tariff for Retail Delivery Service §6.3.4, Agreement for Interconnection and Parallel Operation of Distributed Generation.

Docket Style and Number: Joint Petition of Oncor Electric Delivery Company, LLC and the United States Department of Veterans Affairs for Good Cause Exceptions to Oncor Tariff for Retail Delivery Service §6.3.4, Agreement for Interconnection and Parallel Operation of Distributed Generation; Docket Number 41789.

The Application: Oncor Electric Delivery Company, LLC and the United States Department of Veterans Affairs (VA) (jointly, Petitioners) filed a joint petition and motion with the Public Utility Commission of Texas (commission) for Approval of Good Cause Exceptions to Oncor's Tariff for Retail Delivery Service §6.3.4, Agreement for Interconnection and Parallel Operation of Distributed Generation (IA).

The VA currently has a renewable (solar) distributed generation (DG) facility of approximately 2.5 MW finished and awaiting connection to Oncor's distribution system in the Temple, Texas, area. However, the VA believes it is a violation of federal law for a federal agency to sign Oncor's IA as the provisions in Paragraphs 4(d), relating to Liability/indemnity, and 8, relating to Governing Law would be in conflict with federal law. The Petitioners request that the Commission make exceptions to Oncor's IA, paragraphs 4(d) and 8. The exceptions will allow for Oncor and the VA to sign a mutually agreeable IA, and thereby allow for the connection of the VA's Temple 2.5 solar DG facility and the 5.0 MW Dallas DG facility, thereby promoting the Commission's goals of providing additional generation, including renewable generation, to the Electric Reliability Council of Texas grid.

The Petitioners stated that the relief requested, if granted, would directly affect only Oncor and the VA.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 41789.

TRD-201303725
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 4, 2013

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Notice of Petition for Restoration of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 29, 2013, for restoration of Universal Service Funding pursuant to Public Utility Regulatory Act, §56.025 and P.U.C. Substantive Rule §26.406.

Docket Style and Number: Application of Blossom Telephone Company, Inc. to Recover Funds From the Texas Universal Service Fund Pursuant to PURA §56.025 and P.U.C. Substantive Rule §26.406. Docket Number 41797.

The Application: Blossom Telephone Company, Inc. (Blossom) seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Blossom. The petition requests that the commission allow recovery of funds from the TUSF in the amount of $58,034 for 2012 and $30,751 for 2013, for a total of $88,785, to replace FUSF revenue reductions.

In addition, Blossom also seeks an adjustment to local residential rates from $8.80 to $14.00, and business service rates from $9.00 to $15.50. Blossom is requesting to bundle its Tone Dialing Rate of $1.50 into its local access line rate and to eliminate all monthly rural mileage charges for residential customers. Blossom estimates the proposed rate increases would result in projected additional revenues of $7,087, less the cost of providing expanded local calling service to the Deport and Roxton exchanges at no additional cost to the customer.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 41797.

TRD-201303726
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 4, 2013

♦ ♦ ♦

Notice of Proceeding for 2013 Annual State Certification for Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds

Notice is given to the public of the 2013 annual certification proceeding initiated by the Public Utility Commission of Texas (commission) for state certification of common carriers as eligible telecommunications carriers (ETC) to receive federal universal service funds (FUSF).

Project Title and Number: Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds. Project Number 24481.

Under 47 C.F.R. §54.314, the commission annually certifies that all federal high-cost support provided to carriers in Texas was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The commission must file the certification with the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC) by December 16, 2013. Without certification, carriers will not receive federal high-cost support.

The certification requirement applies to all incumbent local exchange carriers and competitive eligible telecommunications carriers seeking federal high-cost support. Under P.U.C. Substantive Rule §26.418(j), each carrier shall provide the commission with a sworn affidavit certifying that the carrier complies with federal requirements for receiving federal high-cost support. All carriers in Texas requesting certification by the commission shall submit an affidavit by October 15, 2013.

Carriers seeking to be certified may contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. Persons contacting the commission regarding this proceeding should refer to Project Number 24481.

TRD-201303723
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 4, 2013

♦ ♦ ♦

Public Notice of Request for Comments

The staff of the Public Utility Commission of Texas (commission) requests comments regarding a strawman that would amend several commission substantive rules relating to telecommunications service to conform them to legislation enacted during the 83rd Regular Legislative Session of the Texas Legislature, including but not limited to Senate Bills (SB) 259, 512, 583, and 809. Specifically, the strawman would amend various sections of Chapter 26 of the P.U.C. Substantive Rules, including but not limited to: §26.05, relating to Definitions;

§26.28, relating to Suspension or Disconnection of Service; §26.73, relating to Annual Earnings Report; §26.89, relating to Information Regarding Rates and Services of Nondominant Carriers; §26.211, relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges; §26.225, relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies; §26.230 relating to Requirements Applicable to Chapter 65 One-day Informational Notice Filings; §26.406, relating to Implementation of PURA §56.025; §26.420, relating to Administration of Texas Universal Service Fund; and §26.431 relating to Monitoring of Certain 911 Fees. Project Number 41609, *Rulemaking to Amend Substantive Rules Relating to Telecommunications to Conform to 2013 Legislation* has been established for this proceeding.

On Friday, September 20, 2013, the commission shall make a copy of the strawman available in Central Records under Project Number 41609.

The commission also requests interested persons file comments in response to the following questions:

1. In addition to S.B. 259, S.B. 512, S.B. 583, and S.B. 809, the commission considered the following bills for their impact on Chapter 26 of the commission's rules: H.B. 1133, H.B. 1600, H.B. 1972, H.B. 3355, and S.B. 1040. Are there any other bills from the 83rd Regular Session of the Texas Legislature that the commission should consider for possible impact on Chapter 26 of the commission's Substantive Rules?

2. Of the bills having a potential effect on Chapter 26 of the commission's rules, are any bills or bill sections self-executing and not in need of additional rule language?

Comments on the strawman and responses to the questions may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 no later than Monday, October 14, 2013. All responses should reference Project Number 41609. This notice is not a formal notice of proposed rulemaking, however, the parties' responses to the questions and comments on the strawman will assist the commission in developing a commission policy or determining the necessity for a related rulemaking.

Questions concerning this notice should be referred to Fred Goodwin, Competitive Market Analyst, Competitive Markets Division, (512) 936-7454. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201303724
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 4, 2013

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Request for Comments on Amended Form for ADAD Permit Registration

The Public Utility Commission of Texas (commission) requests comments on its proposed amendments to Automatic Dial Announcing Devices (ADAD) permit form. The proposed form can be found on the commission's website home page under "Filings," using Control Number 39492. The form is used by ADAD operators to register with the commission as required by P.U.C. Substantive Rule §26.125.

Comments on the proposed form may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the form are required to be filed. Initial comments on the forms are due Tuesday, October 8, 2013, and reply comments are due Monday, October 14, 2013. Comments should be organized in a manner consistent with the organization of the form. All comments should refer to Project Number 39492.

Questions concerning Project Number 39492 should be directed to James Kelsaw, Competitive Markets Division, at (512) 936-7338. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201303703
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 3, 2013

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Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Thursday, October 3, 2013, at 10:00 a.m. at 200 East Riverside Drive, Room 1A-2, in Austin, Texas, to receive public comments on the September 2013 Out of Cycle Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2013-2016.

The STIP reflects the federally funded transportation projects in the FY 2013-2016 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed September 2013 Out of Cycle Revisions to the FY 2013-2016 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5033, and on the department's website at:

http://www.txdot.gov/government/programs/stips.html

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Wednesday, October 2, 2013, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be

reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed September 2013 Out of Cycle Revisions to the FY 2013-2016 STIP to Marc Williams, P.E., Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Tuesday, October 15, 2013.

TRD-201303686
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: August 29, 2013

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Workforce Solutions Upper Rio Grande

Request for Proposals - Workforce Center Operator Services

PY14-RFP-200-132

Workforce Solutions Upper Rio Grande is soliciting applications from qualified organizations/individuals possessing the appropriate education, licensing/certification, capacity and demonstrated ability to provide the following services: Workforce Center Operations (Release Date: September 3, 2013). The primary goal of this Request for Proposal (RFP) is to seek proposals from experienced, qualified, innovative, committed, and cost-effective contractors to provide workforce services. At the end of the procurement process, the Workforce Board intends to negotiate and execute a contract with one or more contractors to deliver workforce services. An RFP may be requested in writing or picked up in person on the day of the respective proposal release date at 12:00 p.m. MDT, at the Board office at 300 E. Main Street, Suite 800, El Paso, Texas 79901. You may also contact Ms. Muriel Thomas-Borders, Contracts Administrator, at (915) 887-2220. The RFP will also be available on the Board's website (www.urgjobs.org).

September 3, 2013, 12:00 p.m. MDT, Release of RFP

September 10, 2013, 10:30 a.m. MDT, Respondents' Conference, 300 E. Main, Yost Conference Room

September 12, 2013, 1:00 p.m. MDT, Career Center Tours Begin at 300 E. Main, Yost Conference Room

September 13, 2013, 5:00 p.m. MDT, Notice of Intent to Respond Deadline

September 17, 2013, 3:00 p.m. MST, Questions Submission Deadline

October 9, 2013, 5:00 p.m. MST

Proposal Submission Deadline

October 10-15, 2013

Evaluation of Applications

October 17, 2013, 3:00 p.m. MDT

Respondent Interviews - Top Finalists

15-Minute Presentations

October 18, 2013

Selection for Award(s)

October 23-31, 2013

Contract Negotiations

November 1-31, 2013

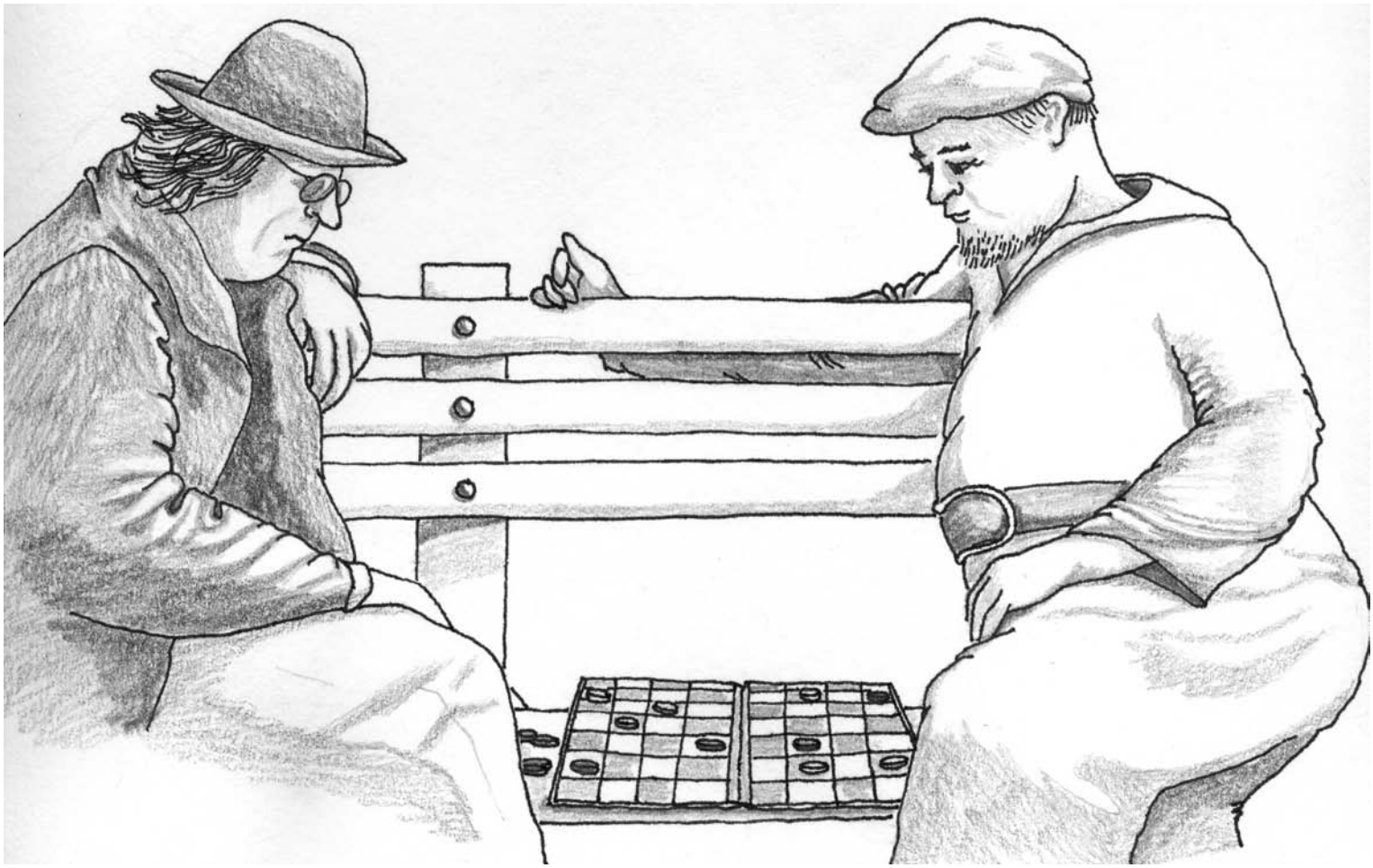
Contract Draft/Execution

By January 1, 2014

Contract Commences with 30-Day Transition Period

TRD-201303719
Joseph Sapien
Program Administrator
Workforce Solutions Upper Rio Grande
Filed: September 4, 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)*

SALES AND CUSTOMER SUPPORT

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